



Montana Legislative History

Chapter: 535 Session L: 1987

Checklist of Bill History

Bill Number: 642 House/ Senate

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



House

Committee:

Natural Resources

Hearing Date(s):

2-13-87, 2-14-87

Committee Report:

Senate

Committee:

Natural Resources

Hearing Date(s):

3-23-87, 3-25-87

Committee Report:

Conference Committee

Hearing Date(s):

n/a

Conference Committee Report:

Compiler Notes

Compiled by: SG

Date: 10-17-23

Notes:

HOUSE FINAL STATUS

3/30	2ND READING CONCURRED	50	0
3/30	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	86	3
4/09	3RD READING AMENDMENTS CONCURRED	89	5
4/14	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 549 EFFECTIVE DATE: 4/20/87		

HB 642 INTRODUCED BY SPAETH
REVISES WATER PERMIT LAWS; QUALIFIES MISSOURI BASIN
WATER RESERVATIONS
BY REQUEST OF DEPARTMENT OF NATURAL RESOURCES &
CONSERVATION

2/06	INTRODUCED		
2/06	REFERRED TO NATURAL RESOURCES		
2/07	FISCAL NOTE REQUESTED		
2/13	HEARING		
2/16	FISCAL NOTE RECEIVED		
2/19	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/21	2ND READING PASSED AS AMENDED	89	1
2/24	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
3/02	REFERRED TO NATURAL RESOURCES		
3/23	HEARING		
3/25	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	50	0
3/30	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	85	1
4/09	3RD READING AMENDMENTS CONCURRED	96	1
4/13	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/14	TRANSMITTED TO GOVERNOR		
4/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 535 EFFECTIVE DATE: 4/17/87		

HB 643 INTRODUCED BY LORY, ET AL.
SETTING THE MAXIMUM SEVERANCE TAX RATE ON SURFACE
MINED COAL AT 18.5 PERCENT; DISALLOWING
DEDUCTION OF TAXES AND ROYALTIES FROM
CONTRACT SALES PRICE

2/06	INTRODUCED
2/06	REFERRED TO TAXATION
2/07	FISCAL NOTE REQUESTED
2/10	FISCAL NOTE RECEIVED
3/03	HEARING
3/06	TABLED IN COMMITTEE

HB 644 INTRODUCED BY NATHE
LIMITING EARNED COMPENSATION UNDER THE TEACHERS'
RETIREMENT SYSTEM

2/06	INTRODUCED
2/06	REFERRED TO STATE ADMINISTRATION

HOUSE BILL NO. 642

INTRODUCED BY SPAETH

BY REQUEST OF THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION

IN THE HOUSE

FEBRUARY 6, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1987	PRINTING REPORT.
FEBRUARY 21, 1987	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 24, 1987	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 97; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
MARCH 25, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	SECOND READING, CONCURRED IN.
MARCH 30, 1987	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1987

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 9, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 House BILL NO. 642
2 INTRODUCED BY Spaeth
3 BY REQUEST OF THE DEPARTMENT
4 OF NATURAL RESOURCES AND CONSERVATION
5
6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMIT AND
7 UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE
8 FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER
9 RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT
10 APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO
11 ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR
12 GRANTING AN EXTENSION OF TIME FOR COMPLETING AN
13 APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION;
14 EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT
15 APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF
16 MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF
17 CASES AND EXTENDING DEADLINES; REVISING THE COMPLIANCE
18 PROVISION IN THE TRANSFER OF A WATER RIGHT; AMENDING
19 SECTIONS 85-2-236, 85-2-306, 85-2-307, 85-2-310, 85-2-312,
20 85-2-318, 85-2-331, 85-2-402, AND 85-2-403, MCA; REPEALING
21 SECTION 85-2-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
22 DATE."
23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
25 Section 1. Section 85-2-236, MCA, is amended to read:

1 "85-2-236. Certificate of water right. (1) When a
2 final decree is entered, the water judge shall send a copy
3 to the department. The Except as provided in 85-2-306, the
4 department shall on the basis of the final decree issue a
5 certificate of water right to each person decreed an
6 existing right. The original of the certificate shall be
7 sent to the person to whom the right is decreed. The
8 department shall keep a copy of the certificate in its
9 office in Helena.

10 (2) The department shall provide to the county clerk
11 and recorder of the county wherein the point of diversion or
12 place of use is located quarterly reports and an annual
13 summary report of all certificates of water right issued by
14 the department within the county."

15 Section 2. Section 85-2-306, MCA, is amended to read:

16 "85-2-306. Exceptions to permit requirements. (1)
17 Groundwater may be appropriated only by a person who has
18 either exclusive property rights in the groundwater
19 development works or the written consent of the person with
20 those property rights. Outside the boundaries of a
21 controlled groundwater area, a permit is not required before
22 appropriating groundwater by means of a well or developed
23 spring with a maximum appropriation of less than 100 gallons
24 per minute. Within 60 days of completion of the well or
25 developed spring and appropriation of the groundwater for

1 beneficial use, the appropriator shall file a notice of
 2 completion with the department on a form provided by the
 3 department at its offices and at the offices of the county
 4 clerk and recorders. Upon receipt of the notice, the
 5 department shall review the notice and may, before issuing a
 6 certificate of water right, return a defective notice for
 7 correction or completion, together with the reasons for
 8 returning it. A notice does not lose priority of filing
 9 because of defects if the notice is corrected, completed,
 10 and refiled with the department within 30 days or within a
 11 further time as the department may allow, not to exceed 6
 12 months. If a notice is not corrected and completed within
 13 the time allowed, the priority date of appropriation shall
 14 be the date of refiled a correct and complete notice with
 15 the department. A certificate of water right may not be
 16 issued until a correct and complete notice has been filed
 17 with the department. The original of the certificate shall
 18 be sent to the ~~county clerk and recorder in the county where~~
 19 ~~the point of diversion or place of use is located for~~
 20 ~~recordation~~ appropriator. The department shall keep a copy
 21 of the certificate in its office in Helena. After
 22 ~~recordation, the clerk and recorder shall send the~~
 23 ~~certificate to the appropriator.~~ The date of filing of the
 24 notice of completion is the date of priority of the right.

25 (2) An appropriator of groundwater by means of a well

1 or developed spring, first put to beneficial use between
 2 January 1, 1962, and July 1, 1973, who did not file a notice
 3 of completion, as required by laws in force prior to April
 4 14, 1981, with the county clerk and recorder shall file a
 5 notice of completion, as provided in subsection (1) of this
 6 section, with the department to perfect the water right. The
 7 filing of a claim of existing water right pursuant to
 8 85-2-221 is sufficient notice of completion under this
 9 subsection. The priority date of the appropriation shall be
 10 the date of the filing of a notice as provided in subsection
 11 (1) of this section or the date of the filing of the claim
 12 of existing water right. An appropriation under this
 13 subsection is an existing right, and a permit is not
 14 required; however, the department shall acknowledge the
 15 receipt of a correct and complete filing of a notice of
 16 completion, except that for an appropriation of less than
 17 100 gallons per minute, the department shall issue a
 18 certificate of water right. If a certificate is issued
 19 under this section, a certificate need not be issued under
 20 the adjudication proceedings provided for in 85-2-236.

21 (3) A permit is not required before constructing an
 22 impoundment or pit and appropriating water for use by
 23 livestock if the maximum capacity of the impoundment or pit
 24 is less than 15 acre-feet and the appropriation is less than
 25 30 acre-feet per year and is from a source other than a

1 perennial flowing stream and the impoundment or pit is to be
 2 constructed on and will be accessible to a parcel of land
 3 that is owned or under the control of the applicant and that
 4 is 40 acres or larger. As used in this subsection, a
 5 perennial flowing stream means a stream which historically
 6 has flowed continuously at all seasons of the year, during
 7 dry as well as wet years. However, within 60 days after
 8 constructing the impoundment or pit, the appropriator shall
 9 apply for a permit as prescribed by this part. Upon receipt
 10 of a correct and complete application for a stockwater
 11 provisional permit, the department shall then automatically
 12 issue a provisional permit. If the department determines
 13 after a hearing that the rights of other appropriators have
 14 been or will be adversely affected, it may revoke the permit
 15 or require the permittee to modify the impoundment or pit
 16 and may then make the permit subject to such terms,
 17 conditions, restrictions, or limitations it considers
 18 necessary to protect the rights of other appropriators.

19 (4) A person may also appropriate water without
 20 applying for or prior to receiving a permit under rules
 21 adopted by the board under 85-2-113."

22 Section 3. Section 85-2-307, MCA, is amended to read:
 23 "85-2-307. Notice of application. (1) (a) Upon receipt
 24 of a proper application for a permit, the department shall
 25 prepare a notice containing the facts pertinent to the

1 application and shall publish the notice once in a newspaper
 2 of general circulation in the area of the source ~~once-a-week~~
 3 ~~for-2-consecutive-weeks~~.

4 (b) Before the ~~last~~ date of publication, the
 5 department shall also serve the notice by first-class mail
 6 upon:

7 (i) an appropriator of water or applicant for or
 8 holder of a permit who, according to the records of the
 9 department, may be affected by the proposed appropriation;

10 (ii) any purchaser under contract for deed, as defined
 11 in 70-20-115, of property that, according to the records of
 12 the department, may be affected by the proposed
 13 appropriation; and

14 (iii) any public agency that has reserved waters in the
 15 source under 85-2-316.

16 (c) The department may, in its discretion, also serve
 17 notice upon any state agency or other person the department
 18 feels may be interested in or affected by the proposed
 19 appropriation.

20 (d) The department shall file in its records proof of
 21 service by affidavit of the publisher in the case of notice
 22 by publication and by its own affidavit in the case of
 23 service by mail.

24 (2) The notice shall state that by a date set by the
 25 department (not less than 15 days or more than 60 days after

1 the last date of publication) persons may file with the
2 department written objections to the application.

3 (3) The requirements of subsections (1) and (2) of
4 this section do not apply if the department finds, on the
5 basis of information reasonably available to it, that the
6 appropriation as proposed in the application will not
7 adversely affect the rights of other persons."

8 Section 4. Section 85-2-310, MCA, is amended to read:

9 "85-2-310. Action on application. (1) The department
10 shall grant, deny, or condition an application for a permit
11 in whole or in part within 120 days after the last date of
12 publication of the notice of application if no objections
13 have been received and within 180 days if a hearing is held
14 or objections have been received. However, in either case
15 the time may be extended upon agreement of the applicant,
16 or, in those cases where an environmental impact statement
17 must be prepared or in other extraordinary cases, not more
18 than 60 days upon order of the department. If the
19 department orders the time extended, it shall serve a notice
20 of the extension and the reasons therefor by certified mail
21 upon the applicant and each person who has filed an
22 objection as provided by 85-2-308.

23 (2) However, an application may not be approved in a
24 modified form or upon terms, conditions, or limitations
25 specified by the department or denied, unless the applicant

1 is first granted an opportunity to be heard. If no objection
2 is filed against the application but the department is of
3 the opinion that the application should be approved in a
4 modified form or upon terms, conditions, or limitations
5 specified by it or that the application should be denied,
6 the department shall prepare a statement of its opinion and
7 the reasons therefor. The department shall serve a statement
8 of its opinion by certified mail upon the applicant,
9 together with a notice that the applicant may obtain a
10 hearing by filing a request therefor within 30 days after
11 the notice is mailed. The notice shall further state that
12 the application will be modified in a specified manner or
13 denied, unless a hearing is requested.

14 (3) The department may cease action upon an
15 application for a permit and return it to the applicant when
16 it finds that the application is not in good faith or does
17 not show a bona fide intent to appropriate water for a
18 beneficial use. An application returned for any of these
19 reasons shall be accompanied by a statement of the reasons
20 for which it was returned, and there shall be no right to a
21 priority date based upon the filing of the application.
22 Returning an application pursuant to this subsection shall
23 be deemed a final decision of the department.

24 (4) For all applications filed after July 1, 1973, the
25 department shall find that an application is not in good

1 faith or does not show a bona fide intent to appropriate
2 water for a beneficial use if:

3 (a) an application is not corrected and completed as
4 required by 85-2-302;

5 (b) the appropriate filing fee is not paid;

6 (c) the application does not document:

7 (i) a beneficial use of water;

8 (ii) the proposed place of use of all water applied
9 for;

10 (iii) for an appropriation of 4,000 acre-feet a year or
11 more and 5.5 cubic feet per second or more, a detailed
12 project plan including, ~~but not limited to, a reasonable~~
13 ~~time line for the completion of the project and the actual~~
14 ~~application of the water to a beneficial user, which may not~~
15 ~~exceed 10 years from the date of application, detailing~~
16 describing when and how much water will be put to a
17 beneficial use. The project plan must include a reasonable
18 time line, not to exceed 10 years from the time of issuance
19 of a permit, for the completion of the project and the
20 actual application of the water to a beneficial use.

21 (iv) for appropriations not covered in subsection
22 (4)(c)(iii), a general project plan stating when and how
23 much water will be put to a beneficial use; and

24 (v) if the water applied for is to be appropriated
25 above that which will be used solely by the applicant or if

1 it will be marketed by the applicant to other users,
2 information detailing:

3 (A) each person who will use the water and the amount
4 of water each person will use;

5 (B) the proposed place of use of all water by each
6 person;

7 (C) the nature of the relationship between the
8 applicant and each person using the water; and

9 (D) each firm contractual agreement for the specified
10 amount of water for each person using the water; or

11 (d) the appropriate environmental impact statement
12 fee, if any, is not paid as required by 85-2-124."

13 Section 5. Section 85-2-312, MCA, is amended to read:

14 "85-2-312. Terms of permit. (1) The department may
15 issue a permit for less than the amount of water requested,
16 but in no case may it issue a permit for more water than is
17 requested or than can be beneficially used without waste for
18 the purpose stated in the application. The department may
19 require modification of plans and specifications for the
20 appropriation or related diversion or construction. The
21 department may issue a permit subject to terms, conditions,
22 restrictions, and limitations it considers necessary to
23 satisfy the criteria listed in 85-2-311, and it may issue
24 temporary or seasonal permits. A permit shall be issued
25 subject to existing rights and any final determination of

1 those rights made under this chapter.

2 (2) The department ~~may~~ shall specify in the permit or
3 in any authorized extension of time provided in subsection
4 (3), ~~limit~~ the time limits for commencement of the
5 appropriation works, completion of construction, and actual
6 application of the water to the proposed beneficial use. In
7 fixing those time limits, the department shall consider the
8 cost and magnitude of the project, the engineering and
9 physical features to be encountered, and, on projects
10 designed for gradual development and gradually increased use
11 of water, the time reasonably necessary for that gradual
12 development and increased use. ~~For good cause shown by the~~
13 ~~permittee, the department may in its discretion reasonably~~
14 ~~extend time limits.~~ The department shall issue the permit or
15 authorized extension of time subject to the terms,
16 conditions, restrictions, and limitations it considers
17 necessary to ensure that the work on the appropriation is
18 commenced, conducted, and completed and that the water is
19 actually applied in a timely manner to the beneficial use
20 specified in the permit.

21 (3) The department may, upon a showing of good cause,
22 extend time limits specified in the permit for commencement
23 of the appropriation works, completion of construction, and
24 actual application of the water to the proposed beneficial
25 use. All requests for extensions of time must be by

1 affidavit and must be filed with the department prior to the
2 expiration of the time limit specified in the permit or any
3 previously authorized extension of time. The department may
4 issue an order temporarily extending the time limit
5 specified in the permit for 120 days or until the department
6 has completed its action under this section, whichever is
7 greater. Upon receipt of a proper request for extension of
8 time, the department shall prepare a notice containing the
9 facts pertinent to the request for extension of time and
10 shall publish the notice in a newspaper of general
11 circulation in the area of the source. The department may
12 serve notice by first-class mail upon any public agency or
13 other person the department determines may be interested in
14 or affected by the request for extension of time. The
15 department shall hold a hearing on the request for extension
16 of time on its own motion or if requested by an interested
17 party. The department may grant the extension of time in
18 the absence of a hearing if no requests for a hearing are
19 received and the extension of time is granted as requested,
20 or the department may grant the extension of time in a
21 modified form by following the process established in
22 85-2-310(2). Subsequent extensions of time may be made in
23 the same manner.

24 (3)(4) The original of the permit shall be sent to the
25 permittee, and a copy shall be kept in the office of the

1 department in Helena.

2 ~~†4†~~(5) The department shall provide to the county
3 clerk and recorder of the county wherein the point of
4 diversion or place of use is located quarterly reports and
5 an annual summary report of all water right permits,
6 certificates, and change approvals issued by the department
7 within the county."

8 Section 6. Section 85-2-318, MCA, is amended to read:

9 "85-2-318. Water right appropriation account. There is
10 established a water right appropriation account in the state
11 special revenue fund of the state treasury. All fees
12 collected as provided in 85-2-113 shall be deposited in the
13 account to help pay the expenses incurred by the department
14 for administering and enforcing this part, part 1, part 4,
15 and part 5 of chapter 2, Title 85, and Title 37, chapter
16 43."

17 Section 7. Section 85-2-331, MCA, is amended to read:

18 "85-2-331. Reservations within Missouri River basin.

19 (1) The state or any agency or political subdivision thereof
20 or the United States or any agency thereof that desires to
21 apply for a reservation of water in the Missouri River basin
22 shall file an application pursuant to 85-2-316 no later than
23 July 1, ~~1989~~ 1991.

24 (2) Subject to legislative appropriation, the
25 department shall provide technical and financial assistance

1 to other state agencies and political subdivisions in
2 applying for reservations within the Missouri River basin.

3 (3) Before December 31, ~~1991~~ 1993, the board shall
4 make a final determination in accordance with 85-2-316 on
5 all applications filed before July 1, ~~1989~~ 1991, for
6 reservations of water in the Missouri River basin.

7 (4) Water reservations approved by the board under
8 this section have a priority date of July 1, 1985. If the
9 department issues a permit under Title 85, chapter 2, part
10 3, prior to the granting of a reservation under this
11 section, the board may subordinate the reservation to the
12 permit if it finds that the subordination does not interfere
13 substantially with the purpose of any reservation. The board
14 shall by order establish the relative priority of
15 applications approved under this section."

16 Section 8. Section 85-2-402, MCA, is amended to read:

17 "85-2-402. Changes in appropriation rights. (1) An
18 appropriator may not make a change in an appropriation right
19 except as permitted under this section and with the approval
20 of the department or, if applicable, of the legislature.

21 (2) Except as provided in subsections (3) through (5),
22 the department shall approve a change in appropriation right
23 if the appropriator proves by substantial credible evidence
24 that the following criteria are met:

25 (a) The proposed use will not adversely affect the

1 water rights of other persons or other planned uses or
2 developments for which a permit has been issued or for which
3 water has been reserved.

4 (b) The proposed means of diversion, construction, and
5 operation of the appropriation works are adequate.

6 (c) The proposed use of water is a beneficial use.

7 (3) The department may not approve a change in purpose
8 of use or place of use of an appropriation of 4,000 or more
9 acre-feet of water a year and 5.5 or more cubic feet per
10 second of water unless the appropriator proves by
11 substantial credible evidence that:

12 (a) the criteria in subsection (2) are met;

13 (b) the proposed change is a reasonable use. A
14 finding of reasonable use must be based on a consideration
15 of:

16 (i) the existing demands on the state water supply, as
17 well as projected demands of water for future beneficial
18 purposes, including municipal water supplies, irrigation
19 systems, and minimum streamflows for the protection of
20 existing water rights and aquatic life;

21 (ii) the benefits to the applicant and the state;

22 (iii) the effects on the quantity and quality of water
23 for existing uses in the source of supply;

24 (iv) the availability and feasibility of using
25 low-quality water for the purpose for which application has

1 been made;

2 (v) the effects on private property rights by any
3 creation of or contribution to saline seep; and

4 (vi) the probable significant adverse environmental
5 impacts of the proposed use of water as determined by the
6 department pursuant to Title 75, chapter 1, or Title 75,
7 chapter 20.

8 (4) The department may not approve a change in purpose
9 of use or place of use for a diversion that results in 4,000
10 or more acre-feet of water a year and 5.5 or more cubic feet
11 per second of water being consumed unless:

12 (a) the applicant proves by clear and convincing
13 evidence and the department finds that the criteria in
14 subsections (2) and (3) are met; and

15 (b) the department then petitions the legislature and
16 the legislature affirms the decision of the department after
17 one or more public hearings.

18 (5) (a) The state of Montana has long recognized the
19 importance of conserving its public waters and the necessity
20 to maintain adequate water supplies for the state's water
21 requirements, including requirements for reserved water
22 rights held by the United States for federal reserved lands
23 and in trust for the various Indian tribes within the
24 state's boundaries. Although the state of Montana also
25 recognizes that, under appropriate conditions, the

1 out-of-state transportation and use of its public waters are
2 not in conflict with the public welfare of its citizens or
3 the conservation of its waters, the following criteria must
4 be met before out-of-state use may occur:

5 (b) The department and, if applicable, the legislature
6 may not approve a change in appropriation right for the
7 withdrawal and transportation of appropriated water for use
8 outside the state unless the appropriator proves by clear
9 and convincing evidence and, if applicable, the legislature
10 approves after one or more public hearings that:

11 (i) depending on the volume of water diverted or
12 consumed, the applicable criteria and procedures of
13 subsection (2) or (3) are met;

14 (ii) the proposed out-of-state use of water is not
15 contrary to water conservation in Montana; and

16 (iii) the proposed out-of-state use of water is not
17 otherwise detrimental to the public welfare of the citizens
18 of Montana.

19 (c) In determining whether the appropriator has proved
20 by clear and convincing evidence that the requirements of
21 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
22 department and, if applicable, the legislature shall
23 consider the following factors:

24 (i) whether there are present or projected water
25 shortages within the state of Montana;

1 (ii) whether the water that is the subject of the
2 proposed change in appropriation might feasibly be
3 transported to alleviate water shortages within the state of
4 Montana;

5 (iii) the supply and sources of water available to the
6 applicant in the state where the applicant intends to use
7 the water; and

8 (iv) the demands placed on the applicant's supply in
9 the state where the applicant intends to use the water.

10 (d) When applying for a change in appropriation right
11 to withdraw and transport water for use outside the state,
12 the applicant shall submit to and comply with the laws of
13 the state of Montana governing the appropriation and use of
14 water.

15 (6) For any application for a change in appropriation
16 right involving 4,000 or more acre-feet of water a year and
17 5.5 or more cubic feet per second of water, the department
18 shall give notice of the proposed change in accordance with
19 85-2-307 and shall hold one or more hearings in accordance
20 with 85-2-309 prior to its approval or denial of the
21 proposed change. The department shall provide notice and may
22 hold one or more hearings upon any other proposed change if
23 it determines that such a change might adversely affect the
24 rights of other persons.

25 (7) The department or the legislature, if applicable,

1 may approve a change subject to such terms, conditions,
 2 restrictions, and limitations as it considers necessary to
 3 satisfy the criteria of this section, including limitations
 4 on the time for completion of the change. The department
 5 may extend time limits specified in the change approval
 6 under the applicable criteria and procedures of 85-2-312(3).

7 (8) If a change is not completed as approved by the
 8 department or legislature or if the terms, conditions,
 9 restrictions, and limitations of the change approval are not
 10 complied with, the department may, after notice and
 11 opportunity for hearing, require the appropriator to show
 12 cause why the change approval should not be modified or
 13 revoked. If the appropriator fails to show sufficient cause,
 14 the department may modify or revoke the change approval.

15 (9) The original of a change approval issued by the
 16 department must be sent to the applicant, and a duplicate
 17 must be kept in the office of the department in Helena.

18 (10) A person holding an issued permit or change
 19 approval that has not been perfected may change the place of
 20 diversion, place of use, purpose of use, or place of storage
 21 by filing an application for change pursuant to this
 22 section.

23 (11) A change in appropriation right contrary to the
 24 provisions of this section is invalid. No officer, agent,
 25 agency, or employee of the state may knowingly permit, aid,

1 or assist in any manner such unauthorized change in
 2 appropriation right. No person or corporation may, directly
 3 or indirectly, personally or through an agent, officer, or
 4 employee, attempt to change an appropriation right except in
 5 accordance with this section."

6 Section 9. Section 85-2-403, MCA, is amended to read:

7 "85-2-403. Transfer of appropriation right. (1) The
 8 right to use water shall pass with a conveyance of the land
 9 or transfer by operation of law, unless specifically
 10 exempted therefrom. All transfers of interests in
 11 appropriation rights shall be without loss of priority.

12 (2) Failure to comply with the provisions of
 13 85-2-402(6) does not render a conveyance or reservation of a
 14 water right void, but the right may not be used until the
 15 department has approved the change. This subsection applies
 16 retroactively, within the meaning of 1-2-109, to a
 17 conveyance or reservation made after July 1, 1973."

18 NEW SECTION. Section 10. Repealer. Section 85-2-317,
 19 MCA, is repealed.

20 NEW SECTION. Section 11. Extension of authority. Any
 21 existing authority of the board of natural resources and
 22 conservation to make rules on the subject of the provisions
 23 of this act is extended to the provisions of this act.

24 NEW SECTION. Section 12. Effective date. This act is
 25 effective on passage and approval.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB642, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the permit and utilization provisions of the water use laws; altering the filing and issuance requirements of a certificate of water right; reducing the publication requirement for a permit application; redefining a reasonable period of time to establish bona fide intent; revising the procedure for granting an extension of time for completing an appropriation under a permit or change authorization; expanding authority to expend money from the water right appropriation account; subordinating priority dates of Missouri River Basin Reservations in a limited class of cases and extending deadlines; revising the compliance provision in the transfer of a water right; amending Sections 85-2-236, 85-2-306, 85-2-307, 85-2-310, 85-2-312, 85-2-318, 85-2-331, 85-2-402, and 85-2-403, MCA; repealing Section 85-2-317, MCA; and providing an immediate effective date.

ASSUMPTIONS:

1. Amending Section 85-2-307 will reduce notice from two publications to one publication.
2. Amending Section 85-2-312 and 85-2-402 will require newspaper publication, individual noticing and hearings for extension of time requests.
3. The Board of Natural Resources and Conservation will adopt fee rules under 85-2-312 and 85-2-402 to collect direct costs for publishing extension of time requests.

FISCAL IMPACT:

	FY88			FY89		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Operating Costs	\$ 433,677	\$ 445,762	\$ 12,085	\$ 433,677	\$ 445,917	\$ 12,240
<u>Funding:</u>						
General Fund	\$ 433,677	\$ 433,682	\$ 205	\$ 433,677	\$ 434,037	\$ 360
State Special			\$ 11,880			\$ 11,880
<u>Revenues:</u>						
State Special	\$ 75,000	\$ 86,880	\$ 11,880	\$ 75,000	\$ 86,880	\$ 11,880

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

If the Board of Natural Resources raises fees from \$10 to \$15 under Section 85-2-318 for Notices of Completion, approximately \$10,000 in FY88 and \$10,000 in FY89 would be raised.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

Publication costs should be passed on to the permittee to prevent a conflict of notice reimbursement costs.

David L. Hunter DATE 2/16/87
 DAVID L. HUNTER, BUDGET DIRECTOR
 Office of Budget and Program Planning

Gary Spaeth DATE 17 Feb 87
 GARY SPAETH, PRIMARY SPONSOR

Fiscal Note for HB642, as introduced.

HB 642

APPROVED BY COMM. ON
NATURAL RESOURCESHOUSE BILL NO. 642
INTRODUCED BY SPAETH
BY REQUEST OF THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMIT AND UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR GRANTING AN EXTENSION OF TIME FOR COMPLETING AN APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION; EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF CASES AND EXTENDING DEADLINES FOR RESERVATIONS BELOW FORT PECK DAM; REVISING THE COMPLIANCE PROVISION IN THE TRANSFER OF A WATER RIGHT; AMENDING SECTIONS 85-2-236, 85-2-306, 85-2-307, 85-2-310, 85-2-312, 85-2-318, 85-2-331, 85-2-402, AND 85-2-403, MCA; ~~REPEALING SECTION 85-2-317, MCA~~; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. (1) When a final decree is entered, the water judge shall send a copy to the department. The Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."

Section 2. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Groundwater may be appropriated only by a person who has either exclusive property rights in the groundwater development works or the written consent of the person with those property rights. Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute. Within 60 days of completion of the well or developed spring and appropriation of the groundwater for

1 beneficial use, the appropriator shall file a notice of
 2 completion with the department on a form provided by the
 3 department at its offices and at the offices of the county
 4 clerk and recorders. Upon receipt of the notice, the
 5 department shall review the notice and may, before issuing a
 6 certificate of water right, return a defective notice for
 7 correction or completion, together with the reasons for
 8 returning it. A notice does not lose priority of filing
 9 because of defects if the notice is corrected, completed,
 10 and refiled with the department within 30 days or within a
 11 further time as the department may allow, not to exceed 6
 12 months. If a notice is not corrected and completed within
 13 the time allowed, the priority date of appropriation shall
 14 be the date of refiling a correct and complete notice with
 15 the department. A certificate of water right may not be
 16 issued until a correct and complete notice has been filed
 17 with the department. The original of the certificate shall
 18 be sent to the ~~county clerk and recorder in the county where~~
 19 ~~the point of diversion or place of use is located for~~
 20 ~~recordation~~ appropriator. The department shall keep a copy
 21 of the certificate in its office in Helena. After
 22 ~~recordation, the clerk and recorder shall send the~~
 23 ~~certificate to the appropriator.~~ The date of filing of the
 24 notice of completion is the date of priority of the right.

25 (2) An appropriator of groundwater by means of a well

1 or developed spring, first put to beneficial use between
 2 January 1, 1962, and July 1, 1973, who did not file a notice
 3 of completion, as required by laws in force prior to April
 4 14, 1981, with the county clerk and recorder shall file a
 5 notice of completion, as provided in subsection (1) of this
 6 section, with the department to perfect the water right. The
 7 filing of a claim of existing water right pursuant to
 8 85-2-221 is sufficient notice of completion under this
 9 subsection. The priority date of the appropriation shall be
 10 the date of the filing of a notice as provided in subsection
 11 (1) of this section or the date of the filing of the claim
 12 of existing water right. An appropriation under this
 13 subsection is an existing right, and a permit is not
 14 required; however, the department shall acknowledge the
 15 receipt of a correct and complete filing of a notice of
 16 completion, except that for an appropriation of less than
 17 100 gallons per minute, the department shall issue a
 18 certificate of water right. If a certificate is issued
 19 under this section, a certificate need not be issued under
 20 the adjudication proceedings provided for in 85-2-236.

21 (3) A permit is not required before constructing an
 22 impoundment or pit and appropriating water for use by
 23 livestock if the maximum capacity of the impoundment or pit
 24 is less than 15 acre-feet and the appropriation is less than
 25 30 acre-feet per year and is from a source other than a

1 perennial flowing stream and the impoundment or pit is to be
 2 constructed on and will be accessible to a parcel of land
 3 that is owned or under the control of the applicant and that
 4 is 40 acres or larger. As used in this subsection, a
 5 perennial flowing stream means a stream which historically
 6 has flowed continuously at all seasons of the year, during
 7 dry as well as wet years. However, within 60 days after
 8 constructing the impoundment or pit, the appropriator shall
 9 apply for a permit as prescribed by this part. Upon receipt
 10 of a correct and complete application for a stockwater
 11 provisional permit, the department shall then automatically
 12 issue a provisional permit. If the department determines
 13 after a hearing that the rights of other appropriators have
 14 been or will be adversely affected, it may revoke the permit
 15 or require the permittee to modify the impoundment or pit
 16 and may then make the permit subject to such terms,
 17 conditions, restrictions, or limitations it considers
 18 necessary to protect the rights of other appropriators.

19 (4) A person may also appropriate water without
 20 applying for or prior to receiving a permit under rules
 21 adopted by the board under 85-2-113."

22 Section 3. Section 85-2-307, MCA, is amended to read:

23 "85-2-307. Notice of application. (1) (a) Upon receipt
 24 of a proper application for a permit, the department shall
 25 prepare a notice containing the facts pertinent to the

1 application and shall publish the notice once in a newspaper
 2 of general circulation in the area of the source ~~once-a-week~~
 3 ~~for-2-consecutive-weeks~~.

4 (b) Before the ~~last~~ date of publication, the
 5 department shall also serve the notice by first-class mail
 6 upon:

7 (i) an appropriator of water or applicant for or
 8 holder of a permit who, according to the records of the
 9 department, may be affected by the proposed appropriation;

10 (ii) any purchaser under contract for deed, as defined
 11 in 70-20-115, of property that, according to the records of
 12 the department, may be affected by the proposed
 13 appropriation; and

14 (iii) any public agency that has reserved waters in the
 15 source under 85-2-316.

16 (c) The department may, in its discretion, also serve
 17 notice upon any state agency or other person the department
 18 feels may be interested in or affected by the proposed
 19 appropriation.

20 (d) The department shall file in its records proof of
 21 service by affidavit of the publisher in the case of notice
 22 by publication and by its own affidavit in the case of
 23 service by mail.

24 (2) The notice shall state that by a date set by the
 25 department (not less than 15 days or more than 60 days after

1 the last date of publication) persons may file with the
2 department written objections to the application.

3 (3) The requirements of subsections (1) and (2) of
4 this section do not apply if the department finds, on the
5 basis of information reasonably available to it, that the
6 appropriation as proposed in the application will not
7 adversely affect the rights of other persons."

8 Section 4. Section 85-2-310, MCA, is amended to read:

9 "85-2-310. Action on application. (1) The department
10 shall grant, deny, or condition an application for a permit
11 in whole or in part within 120 days after the last date of
12 publication of the notice of application if no objections
13 have been received and within 180 days if a hearing is held
14 or objections have been received. However, in either case
15 the time may be extended upon agreement of the applicant,
16 or, in those cases where an environmental impact statement
17 must be prepared or in other extraordinary cases, not more
18 than 60 days upon order of the department. If the
19 department orders the time extended, it shall serve a notice
20 of the extension and the reasons therefor by certified mail
21 upon the applicant and each person who has filed an
22 objection as provided by 85-2-308.

23 (2) However, an application may not be approved in a
24 modified form or upon terms, conditions, or limitations
25 specified by the department or denied, unless the applicant

1 is first granted an opportunity to be heard. If no objection
2 is filed against the application but the department is of
3 the opinion that the application should be approved in a
4 modified form or upon terms, conditions, or limitations
5 specified by it or that the application should be denied,
6 the department shall prepare a statement of its opinion and
7 the reasons therefor. The department shall serve a statement
8 of its opinion by certified mail upon the applicant,
9 together with a notice that the applicant may obtain a
10 hearing by filing a request therefor within 30 days after
11 the notice is mailed. The notice shall further state that
12 the application will be modified in a specified manner or
13 denied, unless a hearing is requested.

14 (3) The department may cease action upon an
15 application for a permit and return it to the applicant when
16 it finds that the application is not in good faith or does
17 not show a bona fide intent to appropriate water for a
18 beneficial use. An application returned for any of these
19 reasons shall be accompanied by a statement of the reasons
20 for which it was returned, and there shall be no right to a
21 priority date based upon the filing of the application.
22 Returning an application pursuant to this subsection shall
23 be deemed a final decision of the department.

24 (4) For all applications filed after July 1, 1973, the
25 department shall find that an application is not in good

1 faith or does not show a bona fide intent to appropriate
2 water for a beneficial use if:

3 (a) an application is not corrected and completed as
4 required by 85-2-302;

5 (b) the appropriate filing fee is not paid;

6 (c) the application does not document:

7 (i) a beneficial use of water;

8 (ii) the proposed place of use of all water applied
9 for;

10 (iii) for an appropriation of 4,000 acre-feet a year or
11 more and 5.5 cubic feet per second or more, a detailed
12 project plan including,--but--not--limited--to,--a--reasonable
13 ~~time--line--for--the--completion--of--the--project--and--the--actual~~
14 ~~application--of--the--water--to--a--beneficial--use,--which--may--not~~
15 ~~exceed--10--years--from--the--date--of--application,--detailing~~
16 describing when and how much water will be put to a
17 beneficial use. The project plan must include a reasonable
18 time line, not to exceed 10 years from the time of issuance
19 of a permit, for the completion of the project and the
20 actual application of the water to a beneficial use.

21 (iv) for appropriations not covered in subsection
22 (4)(c)(iii), a general project plan stating when and how
23 much water will be put to a beneficial use; and

24 (v) if the water applied for is to be appropriated
25 above that which will be used solely by the applicant or if

1 it will be marketed by the applicant to other users,
2 information detailing:

3 (A) each person who will use the water and the amount
4 of water each person will use;

5 (B) the proposed place of use of all water by each
6 person;

7 (C) the nature of the relationship between the
8 applicant and each person using the water; and

9 (D) each firm contractual agreement for the specified
10 amount of water for each person using the water; or

11 (d) the appropriate environmental impact statement
12 fee, if any, is not paid as required by 85-2-124."

13 Section 5. Section 85-2-312, MCA, is amended to read:

14 "85-2-312. Terms of permit. (1) The department may
15 issue a permit for less than the amount of water requested,
16 but in no case may it issue a permit for more water than is
17 requested or than can be beneficially used without waste for
18 the purpose stated in the application. The department may
19 require modification of plans and specifications for the
20 appropriation or related diversion or construction. The
21 department may issue a permit subject to terms, conditions,
22 restrictions, and limitations it considers necessary to
23 satisfy the criteria listed in 85-2-311, and it may issue
24 temporary or seasonal permits. A permit shall be issued
25 subject to existing rights and any final determination of

1 those rights made under this chapter.

2 (2) The department ~~may~~ shall specify in the permit or
3 in any authorized extension of time provided in subsection
4 (3), ~~limit~~ the time limits for commencement of the
5 appropriation works, completion of construction, and actual
6 application of the water to the proposed beneficial use. In
7 fixing those time limits, the department shall consider the
8 cost and magnitude of the project, the engineering and
9 physical features to be encountered, and, on projects
10 designed for gradual development and gradually increased use
11 of water, the time reasonably necessary for that gradual
12 development and increased use. ~~For good cause shown by the~~
13 ~~permittee, the department may in its discretion reasonably~~
14 ~~extend time limits.~~ The department shall issue the permit or
15 authorized extension of time subject to the terms,
16 conditions, restrictions, and limitations it considers
17 necessary to ensure that the work on the appropriation is
18 commenced, conducted, and completed and that the water is
19 actually applied in a timely manner to the beneficial use
20 specified in the permit.

21 (3) The department may, upon a showing of good cause,
22 extend time limits specified in the permit for commencement
23 of the appropriation works, completion of construction, and
24 actual application of the water to the proposed beneficial
25 use. All requests for extensions of time must be by

1 affidavit and must be filed with the department prior to the
2 expiration of the time limit specified in the permit or any
3 previously authorized extension of time. The department may
4 issue an order temporarily extending the time limit
5 specified in the permit for 120 days or until the department
6 has completed its action under this section, whichever is
7 greater. Upon receipt of a proper request for extension of
8 time, the department shall prepare a notice containing the
9 facts pertinent to the request for extension of time and
10 shall publish the notice in a newspaper of general
11 circulation in the area of the source. The department may
12 serve notice by first-class mail upon any public agency or
13 other person the department determines may be interested in
14 or affected by the request for extension of time. The
15 department shall hold a hearing on the request for extension
16 of time on its own motion or if requested by an interested
17 party. The department may grant the extension of time in
18 the absence of a hearing if no requests for a hearing are
19 received and the extension of time is granted as requested,
20 or the department may grant the extension of time in a
21 modified form by following the process established in
22 85-2-310(2). Subsequent extensions of time may be made in
23 the same manner.

24 ~~(3)~~(4) The original of the permit shall be sent to the
25 permittee, and a copy shall be kept in the office of the

1 department in Helena.

2 ~~†4†~~(5) The department shall provide to the county
3 clerk and recorder of the county wherein the point of
4 diversion or place of use is located quarterly reports and
5 an annual summary report of all water right permits,
6 certificates, and change approvals issued by the department
7 within the county."

8 Section 6. Section 85-2-318, MCA, is amended to read:

9 "85-2-318. Water right appropriation account. There is
10 established a water right appropriation account in the state
11 special revenue fund of the state treasury. All fees
12 collected as provided in 85-2-113 shall be deposited in the
13 account to help pay the expenses incurred by the department
14 for administering and enforcing this part, part 1, part 4,
15 and part 5 of chapter 2, Title 85, and Title 37, chapter
16 43."

17 Section 7. Section 85-2-331, MCA, is amended to read:

18 "85-2-331. Reservations within Missouri River basin.

19 (1) The state or any agency or political subdivision thereof
20 or the United States or any agency thereof that desires to
21 apply for a reservation of water in the Missouri River basin
22 shall file an application pursuant to 85-2-316 no later than
23 July 1, ~~1989~~ ~~1991~~ 1989, EXCEPT THAT APPLICATIONS FOR
24 RESERVATION OF WATER BELOW FORT PECK DAM MUST BE FILED NO
25 LATER THAN JULY 1, 1991.

1 (2) Subject to legislative appropriation, the
2 department shall provide technical and financial assistance
3 to other state agencies and political subdivisions in
4 applying for reservations within the Missouri River basin.

5 (3) ~~(A)~~ Before December 31, ~~1991~~ ~~1993~~ 1991, the board
6 shall make a final determination in accordance with 85-2-316
7 on all applications filed before July 1, ~~1989~~ ~~1991~~ 1989, for
8 reservations of water in the Missouri River basin ABOVE FORT
9 PECK DAM.

10 (B) BEFORE DECEMBER 31, 1993, THE BOARD SHALL MAKE A
11 FINAL DETERMINATION IN ACCORDANCE WITH 85-2-316 ON ALL
12 APPLICATIONS FILED BEFORE JULY 1, 1991, FOR RESERVATIONS OF
13 WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM.

14 (C) THE BOARD SHALL DETERMINE WHICH APPLICATIONS OR
15 PORTIONS OF APPLICATIONS ARE CONSIDERED TO BE ABOVE OR BELOW
16 FORT PECK DAM.

17 (4) Water reservations approved by the board under
18 this section have a priority date of July 1, 1985. If the
19 department issues a permit under Title 85, chapter 2, part
20 3, prior to the granting of a reservation under this
21 section, the board may subordinate the reservation to the
22 permit if it finds that the subordination does not interfere
23 substantially with the purpose of any reservation. The board
24 shall by order establish the relative priority of
25 applications approved under this section."

Section 8. Section 85-2-402, MCA, is amended to read:

"85-2-402. Changes in appropriation rights. (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature:

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by substantial credible evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by substantial credible evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and

1 the legislature affirms the decision of the department after
2 one or more public hearings.

3 (5) (a) The state of Montana has long recognized the
4 importance of conserving its public waters and the necessity
5 to maintain adequate water supplies for the state's water
6 requirements, including requirements for reserved water
7 rights held by the United States for federal reserved lands
8 and in trust for the various Indian tribes within the
9 state's boundaries. Although the state of Montana also
10 recognizes that, under appropriate conditions, the
11 out-of-state transportation and use of its public waters are
12 not in conflict with the public welfare of its citizens or
13 the conservation of its waters, the following criteria must
14 be met before out-of-state use may occur:

15 (b) The department and, if applicable, the legislature
16 may not approve a change in appropriation right for the
17 withdrawal and transportation of appropriated water for use
18 outside the state unless the appropriator proves by clear
19 and convincing evidence and, if applicable, the legislature
20 approves after one or more public hearings that:

21 (i) depending on the volume of water diverted or
22 consumed, the applicable criteria and procedures of
23 subsection (2) or (3) are met;

24 (ii) the proposed out-of-state use of water is not
25 contrary to water conservation in Montana; and

1 (iii) the proposed out-of-state use of water is not
2 otherwise detrimental to the public welfare of the citizens
3 of Montana.

4 (c) In determining whether the appropriator has proved
5 by clear and convincing evidence that the requirements of
6 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
7 department and, if applicable, the legislature shall
8 consider the following factors:

9 (i) whether there are present or projected water
10 shortages within the state of Montana;

11 (ii) whether the water that is the subject of the
12 proposed change in appropriation might feasibly be
13 transported to alleviate water shortages within the state of
14 Montana;

15 (iii) the supply and sources of water available to the
16 applicant in the state where the applicant intends to use
17 the water; and

18 (iv) the demands placed on the applicant's supply in
19 the state where the applicant intends to use the water.

20 (d) When applying for a change in appropriation right
21 to withdraw and transport water for use outside the state,
22 the applicant shall submit to and comply with the laws of
23 the state of Montana governing the appropriation and use of
24 water.

25 (6) For any application for a change in appropriation

1 right involving 4,000 or more acre-feet of water a year and
 2 5.5 or more cubic feet per second of water, the department
 3 shall give notice of the proposed change in accordance with
 4 85-2-307 and shall hold one or more hearings in accordance
 5 with 85-2-309 prior to its approval or denial of the
 6 proposed change. The department shall provide notice and may
 7 hold one or more hearings upon any other proposed change if
 8 it determines that such a change might adversely affect the
 9 rights of other persons.

10 (7) The department or the legislature, if applicable,
 11 may approve a change subject to such terms, conditions,
 12 restrictions, and limitations as it considers necessary to
 13 satisfy the criteria of this section, including limitations
 14 on the time for completion of the change. The department
 15 may extend time limits specified in the change approval
 16 under the applicable criteria and procedures of 85-2-312(3).

17 (8) If a change is not completed as approved by the
 18 department or legislature or if the terms, conditions,
 19 restrictions, and limitations of the change approval are not
 20 complied with, the department may, after notice and
 21 opportunity for hearing, require the appropriator to show
 22 cause why the change approval should not be modified or
 23 revoked. If the appropriator fails to show sufficient cause,
 24 the department may modify or revoke the change approval.

25 (9) The original of a change approval issued by the

1 department must be sent to the applicant, and a duplicate
 2 must be kept in the office of the department in Helena.

3 (10) A person holding an issued permit or change
 4 approval that has not been perfected may change the place of
 5 diversion, place of use, purpose of use, or place of storage
 6 by filing an application for change pursuant to this
 7 section.

8 (11) A change in appropriation right contrary to the
 9 provisions of this section is invalid. No officer, agent,
 10 agency, or employee of the state may knowingly permit, aid,
 11 or assist in any manner such unauthorized change in
 12 appropriation right. No person or corporation may, directly
 13 or indirectly, personally or through an agent, officer, or
 14 employee, attempt to change an appropriation right except in
 15 accordance with this section."

16 Section 9. Section 85-2-403, MCA, is amended to read:

17 "85-2-403. Transfer of appropriation right. (1) The
 18 right to use water shall pass with a conveyance of the land
 19 or transfer by operation of law, unless specifically
 20 exempted therefrom. All transfers of interests in
 21 appropriation rights shall be without loss of priority.

22 (2) Failure to comply with the provisions of
 23 85-2-402(6) does not render a conveyance or reservation of a
 24 water right void, but the right may not be used until the
 25 department has approved the change. This subsection applies

1 retroactively, within the meaning of 1-2-109, to a
2 conveyance or reservation made after July 1, 1973."

3 ~~NEW-SECTION---Section-10---Repealer---Section-85-2-317,~~
4 ~~MCA, is repealed.~~

5 NEW SECTION. Section 10. Extension of authority. Any
6 existing authority of the board of natural resources and
7 conservation to make rules on the subject of the provisions
8 of this act is extended to the provisions of this act.

9 NEW SECTION. Section 11. Effective date. This act is
10 effective on passage and approval.

-End-

HOUSE BILL NO. 642

INTRODUCED BY SPAETH

BY REQUEST OF THE DEPARTMENT

OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMIT AND UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR GRANTING AN EXTENSION OF TIME FOR COMPLETING AN APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION; EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF CASES AND EXTENDING DEADLINES FOR RESERVATIONS BELOW FORT PECK DAM; REVISING THE COMPLIANCE PROVISION IN THE TRANSFER OF A WATER RIGHT; AMENDING SECTIONS 85-2-236, 85-2-306, 85-2-307, 85-2-310, 85-2-312, 85-2-318, 85-2-331, 85-2-402, AND 85-2-403, MCA; ~~REPEALING--SECTION--85-2-317,--MCA;~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-236, MCA, is amended to read:

"85-2-236. Certificate of water right. (1) When a final decree is entered, the water judge shall send a copy to the department. The Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena.

(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."

Section 2. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Groundwater may be appropriated only by a person who has either exclusive property rights in the groundwater development works or the written consent of the person with those property rights. Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute, EXCEPT THAT A COMBINED APPROPRIATION FROM TWO OR MORE WELLS OR DEVELOPED SPRINGS EXCEEDING THIS LIMITATION

1 REQUIRES A PERMIT. Within 60 days of completion of the well
 2 or developed spring and appropriation of the groundwater for
 3 beneficial use, the appropriator shall file a notice of
 4 completion with the department on a form provided by the
 5 department at its offices and at the offices of the county
 6 clerk and recorders. Upon receipt of the notice, the
 7 department shall review the notice and may, before issuing a
 8 certificate of water right, return a defective notice for
 9 correction or completion, together with the reasons for
 10 returning it. A notice does not lose priority of filing
 11 because of defects if the notice is corrected, completed,
 12 and refiled with the department within 30 days or within a
 13 further time as the department may allow, not to exceed 6
 14 months. If a notice is not corrected and completed within
 15 the time allowed, the priority date of appropriation shall
 16 be the date of refiled a correct and complete notice with
 17 the department. A certificate of water right may not be
 18 issued until a correct and complete notice has been filed
 19 with the department. The original of the certificate shall
 20 be sent to the county-clerk-and-recorder-in-the-county-where
 21 the-point-of-diversion-or-place-of-use-is-located-for
 22 recordation appropriator. The department shall keep a copy
 23 of the certificate in its office in Helena. After
 24 recordation,---the---clerk---and---recorder---shall---send---the
 25 certificate-to-the-appropriator. The date of filing of the

1 notice of completion is the date of priority of the right.

2 (2) An appropriator of groundwater by means of a well
 3 or developed spring, first put to beneficial use between
 4 January 1, 1962, and July 1, 1973, who did not file a notice
 5 of completion, as required by laws in force prior to April
 6 14, 1981, with the county clerk and recorder shall file a
 7 notice of completion, as provided in subsection (1) of this
 8 section, with the department to perfect the water right. The
 9 filing of a claim of existing water right pursuant to
 10 85-2-221 is sufficient notice of completion under this
 11 subsection. The priority date of the appropriation shall be
 12 the date of the filing of a notice as provided in subsection
 13 (1) of this section or the date of the filing of the claim
 14 of existing water right. An appropriation under this
 15 subsection is an existing right, and a permit is not
 16 required; however, the department shall acknowledge the
 17 receipt of a correct and complete filing of a notice of
 18 completion, except that for an appropriation of less than
 19 100 gallons per minute, the department shall issue a
 20 certificate of water right. If a certificate is issued
 21 under this section, a certificate need not be issued under
 22 the adjudication proceedings provided for in 85-2-236.

23 (3) A permit is not required before constructing an
 24 impoundment or pit and appropriating water for use by
 25 livestock if the maximum capacity of the impoundment or pit

1 is less than 15 acre-feet and the appropriation is less than
 2 30 acre-feet per year and is from a source other than a
 3 perennial flowing stream and the impoundment or pit is to be
 4 constructed on and will be accessible to a parcel of land
 5 that is owned or under the control of the applicant and that
 6 is 40 acres or larger. As used in this subsection, a
 7 perennial flowing stream means a stream which historically
 8 has flowed continuously at all seasons of the year, during
 9 dry as well as wet years. However, within 60 days after
 10 constructing the impoundment or pit, the appropriator shall
 11 apply for a permit as prescribed by this part. Upon receipt
 12 of a correct and complete application for a stockwater
 13 provisional permit, the department shall then automatically
 14 issue a provisional permit. If the department determines
 15 after a hearing that the rights of other appropriators have
 16 been or will be adversely affected, it may revoke the permit
 17 or require the permittee to modify the impoundment or pit
 18 and may then make the permit subject to such terms,
 19 conditions, restrictions, or limitations it considers
 20 necessary to protect the rights of other appropriators.

21 (4) A person may also appropriate water without
 22 applying for or prior to receiving a permit under rules
 23 adopted by the board under 85-2-113."

24 Section 3. Section 85-2-307, MCA, is amended to read:
 25 "85-2-307. Notice of application. (1) (a) Upon receipt

1 of a proper application for a permit, the department shall
 2 prepare a notice containing the facts pertinent to the
 3 application and shall publish the notice once in a newspaper
 4 of general circulation in the area of the source once-a-week
 5 for-2-consecutive-weeks.

6 (b) Before the last date of publication, the
 7 department shall also serve the notice by first-class mail
 8 upon:

9 (i) an appropriator of water or applicant for or
 10 holder of a permit who, according to the records of the
 11 department, may be affected by the proposed appropriation;

12 (ii) any purchaser under contract for deed, as defined
 13 in 70-20-115, of property that, according to the records of
 14 the department, may be affected by the proposed
 15 appropriation; and

16 (iii) any public agency that has reserved waters in the
 17 source under 85-2-316.

18 (c) The department may, in its discretion, also serve
 19 notice upon any state agency or other person the department
 20 feels may be interested in or affected by the proposed
 21 appropriation.

22 (d) The department shall file in its records proof of
 23 service by affidavit of the publisher in the case of notice
 24 by publication and by its own affidavit in the case of
 25 service by mail.

(2) The notice shall state that by a date set by the department (not less than 15 days or more than 60 days after the last date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 4. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a

modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within 30 days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet per second or more, a detailed project plan including, ~~but not limited to, a reasonable time line for the completion of the project and the actual application of the water to a beneficial use, which may not exceed 10 years from the date of application, detailing~~ describing when and how much water will be put to a beneficial use. The project plan must include a reasonable time line, not to exceed 10 years from the time of issuance of a permit, for the completion of the project and the actual application of the water to a beneficial use.

~~(iv)~~ for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 5. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue

1 temporary or seasonal permits. A permit shall be issued
2 subject to existing rights and any final determination of
3 those rights made under this chapter.

4 (2) The department ~~may~~ shall specify in the permit or
5 in any authorized extension of time provided in subsection
6 (3), limit the time limits for commencement of the
7 appropriation works, completion of construction, and actual
8 application of the water to the proposed beneficial use. In
9 fixing those time limits, the department shall consider the
10 cost and magnitude of the project, the engineering and
11 physical features to be encountered, and, on projects
12 designed for gradual development and gradually increased use
13 of water, the time reasonably necessary for that gradual
14 development and increased use. For-good-cause-shown-by--the
15 permittee,--the--department-may-in-its-discretion-reasonably
16 extend-time-limits. The department shall issue the permit or
17 authorized extension of time subject to the terms,
18 conditions, restrictions, and limitations it considers
19 necessary to ensure that the work on the appropriation is
20 commenced, conducted, and completed and that the water is
21 actually applied in a timely manner to the beneficial use
22 specified in the permit.

23 (3) The department may, upon a showing of good cause,
24 extend time limits specified in the permit for commencement
25 of the appropriation works, completion of construction, and

1 actual application of the water to the proposed beneficial
2 use. All requests for extensions of time must be by
3 affidavit and must be filed with the department prior to the
4 expiration of the time limit specified in the permit or any
5 previously authorized extension of time. The department may
6 issue an order temporarily extending the time limit
7 specified in the permit for 120 days or until the department
8 has completed its action under this section, whichever is
9 greater. Upon receipt of a proper request for extension of
10 time, the department shall prepare a notice containing the
11 facts pertinent to the request for extension of time and
12 shall publish the notice in a newspaper of general
13 circulation in the area of the source. The department may
14 serve notice by first-class mail upon any public agency or
15 other person the department determines may be interested in
16 or affected by the request for extension of time. The
17 department shall hold a hearing on the request for extension
18 of time on its own motion or if requested by an interested
19 party. The department may grant the extension of time in
20 the absence of a hearing if no requests for a hearing are
21 received and the extension of time is granted as requested,
22 or the department may grant the extension of time in a
23 modified form by following the process established in
24 85-2-310(2). Subsequent extensions of time may be made in
25 the same manner.

~~(3)~~(4) The original of the permit shall be sent to the permittee, and a copy shall be kept in the office of the department in Helena.

~~(4)~~(5) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all water right permits, certificates, and change approvals issued by the department within the county."

Section 6. Section 85-2-318, MCA, is amended to read:

"85-2-318. Water right appropriation account. There is established a water right appropriation account in the state special revenue fund of the state treasury. All fees collected as provided in 85-2-113 shall be deposited in the account to help pay the expenses incurred by the department for administering and enforcing this part, part 1, part 4, and part 5 of chapter 2, Title 85, and Title 37, chapter 43."

Section 7. Section 85-2-331, MCA, is amended to read:

"85-2-331. Reservations within Missouri River basin.

(1) The state or any agency or political subdivision thereof or the United States or any agency thereof that desires to apply for a reservation of water in the Missouri River basin shall file an application pursuant to 85-2-316 no later than July 1, 1989 1991 1989, EXCEPT THAT APPLICATIONS FOR

RESERVATION OF WATER BELOW FORT PECK DAM MUST BE FILED NO LATER THAN JULY 1, 1991.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin.

(3) (A) Before December 31, 1991 1993 1991, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989 1991 1989, for reservations of water in the Missouri River basin ABOVE FORT PECK DAM.

(B) BEFORE DECEMBER 31, 1993, THE BOARD SHALL MAKE A FINAL DETERMINATION IN ACCORDANCE WITH 85-2-316 ON ALL APPLICATIONS FILED BEFORE JULY 1, 1991, FOR RESERVATIONS OF WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM.

(C) THE BOARD SHALL DETERMINE WHICH APPLICATIONS OR PORTIONS OF APPLICATIONS ARE CONSIDERED TO BE ABOVE OR BELOW FORT PECK DAM.

(4) Water reservations approved by the board under this section have a priority date of July 1, 1985. If the department issues a permit under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the board may subordinate the reservation to the permit if it finds that the subordination does not interfere substantially with the purpose of any reservation. The board

1 shall by order establish the relative priority of
2 applications approved under this section."

3 Section 8. Section 85-2-402, MCA, is amended to read:

4 "85-2-402. Changes in appropriation rights. (1) An
5 appropriator may not make a change in an appropriation right
6 except as permitted under this section and with the approval
7 of the department or, if applicable, of the legislature.

8 (2) Except as provided in subsections (3) through (5),
9 the department shall approve a change in appropriation right
10 if the appropriator proves by substantial credible evidence
11 that the following criteria are met:

12 (a) The proposed use will not adversely affect the
13 water rights of other persons or other planned uses or
14 developments for which a permit has been issued or for which
15 water has been reserved.

16 (b) The proposed means of diversion, construction, and
17 operation of the appropriation works are adequate.

18 (c) The proposed use of water is a beneficial use.

19 (3) The department may not approve a change in purpose
20 of use or place of use of an appropriation of 4,000 or more
21 acre-feet of water a year and 5.5 or more cubic feet per
22 second of water unless the appropriator proves by
23 substantial credible evidence that:

24 (a) the criteria in subsection (2) are met;

25 (b) the proposed change is a reasonable use. A

1 finding of reasonable use must be based on a consideration
2 of:

3 (i) the existing demands on the state water supply, as
4 well as projected demands of water for future beneficial
5 purposes, including municipal water supplies, irrigation
6 systems, and minimum streamflows for the protection of
7 existing water rights and aquatic life;

8 (ii) the benefits to the applicant and the state;

9 (iii) the effects on the quantity and quality of water
10 for existing uses in the source of supply;

11 (iv) the availability and feasibility of using
12 low-quality water for the purpose for which application has
13 been made;

14 (v) the effects on private property rights by any
15 creation of or contribution to saline seep; and

16 (vi) the probable significant adverse environmental
17 impacts of the proposed use of water as determined by the
18 department pursuant to Title 75, chapter 1, or Title 75,
19 chapter 20.

20 (4) The department may not approve a change in purpose
21 of use or place of use for a diversion that results in 4,000
22 or more acre-feet of water a year and 5.5 or more cubic feet
23 per second of water being consumed unless:

24 (a) the applicant proves by clear and convincing
25 evidence and the department finds that the criteria in

1 subsections (2) and (3) are met; and

2 (b) the department then petitions the legislature and
3 the legislature affirms the decision of the department after
4 one or more public hearings.

5 (5) (a) The state of Montana has long recognized the
6 importance of conserving its public waters and the necessity
7 to maintain adequate water supplies for the state's water
8 requirements, including requirements for reserved water
9 rights held by the United States for federal reserved lands
10 and in trust for the various Indian tribes within the
11 state's boundaries. Although the state of Montana also
12 recognizes that, under appropriate conditions, the
13 out-of-state transportation and use of its public waters are
14 not in conflict with the public welfare of its citizens or
15 the conservation of its waters, the following criteria must
16 be met before out-of-state use may occur:

17 (b) The department and, if applicable, the legislature
18 may not approve a change in appropriation right for the
19 withdrawal and transportation of appropriated water for use
20 outside the state unless the appropriator proves by clear
21 and convincing evidence and, if applicable, the legislature
22 approves after one or more public hearings that:

23 (i) depending on the volume of water diverted or
24 consumed, the applicable criteria and procedures of
25 subsection (2) or (3) are met;

1 (ii) the proposed out-of-state use of water is not
2 contrary to water conservation in Montana; and

3 (iii) the proposed out-of-state use of water is not
4 otherwise detrimental to the public welfare of the citizens
5 of Montana.

6 (c) In determining whether the appropriator has proved
7 by clear and convincing evidence that the requirements of
8 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
9 department and, if applicable, the legislature shall
10 consider the following factors:

11 (i) whether there are present or projected water
12 shortages within the state of Montana;

13 (ii) whether the water that is the subject of the
14 proposed change in appropriation might feasibly be
15 transported to alleviate water shortages within the state of
16 Montana;

17 (iii) the supply and sources of water available to the
18 applicant in the state where the applicant intends to use
19 the water; and

20 (iv) the demands placed on the applicant's supply in
21 the state where the applicant intends to use the water.

22 (d) When applying for a change in appropriation right
23 to withdraw and transport water for use outside the state,
24 the applicant shall submit to and comply with the laws of
25 the state of Montana governing the appropriation and use of

1 water.

2 (6) For any application for a change in appropriation
3 right involving 4,000 or more acre-feet of water a year and
4 5.5 or more cubic feet per second of water, the department
5 shall give notice of the proposed change in accordance with
6 85-2-307 and shall hold one or more hearings in accordance
7 with 85-2-309 prior to its approval or denial of the
8 proposed change. The department shall provide notice and may
9 hold one or more hearings upon any other proposed change if
10 it determines that such a change might adversely affect the
11 rights of other persons.

12 (7) The department or the legislature, if applicable,
13 may approve a change subject to such terms, conditions,
14 restrictions, and limitations as it considers necessary to
15 satisfy the criteria of this section, including limitations
16 on the time for completion of the change. The department
17 may extend time limits specified in the change approval
18 under the applicable criteria and procedures of 85-2-312(3).

19 (8) If a change is not completed as approved by the
20 department or legislature or if the terms, conditions,
21 restrictions, and limitations of the change approval are not
22 complied with, the department may, after notice and
23 opportunity for hearing, require the appropriator to show
24 cause why the change approval should not be modified or
25 revoked. If the appropriator fails to show sufficient cause,

1 the department may modify or revoke ~~the~~ change approval.

2 (9) The original of a change approval issued by the
3 department must be sent to the applicant, and a duplicate
4 must be kept in the office of the department in Helena.

5 (10) A person holding an issued permit or change
6 approval that has not been perfected may change the place of
7 diversion, place of use, purpose of use, or place of storage
8 by filing an application for change pursuant to this
9 section.

10 (11) A change in appropriation right contrary to the
11 provisions of this section is invalid. No officer, agent,
12 agency, or employee of the state may knowingly permit, aid,
13 or assist in any manner such unauthorized change in
14 appropriation right. No person or corporation may, directly
15 or indirectly, personally or through an agent, officer, or
16 employee, attempt to change an appropriation right except in
17 accordance with this section."

18 Section 9. Section 85-2-403, MCA, is amended to read:
19 "85-2-403. Transfer of appropriation right. (1) The
20 right to use water shall pass with a conveyance of the land
21 or transfer by operation of law, unless specifically
22 exempted therefrom. All transfers of interests in
23 appropriation rights shall be without loss of priority.

24 (2) Failure to comply with the provisions of
25 85-2-402(6) does not render a conveyance or reservation of a

1 water right void, but the right may not be used until the
2 department has approved the change. This subsection applies
3 retroactively, within the meaning of 1-2-109, to a
4 conveyance or reservation made after July 1, 1973."

5 ~~NEW-SECTION.--Section-10.--Repealer.--Section-85-2-317,~~
6 ~~MCA,--is-repealed.~~

7 NEW SECTION. Section 10. Extension of authority. Any
8 existing authority of the board of natural resources and
9 conservation to make rules on the subject of the provisions
10 of this act is extended to the provisions of this act.

11 NEW SECTION. Section 11. Effective date. This act is
12 effective on passage and approval.

-End-

HOUSE BILL NO. 642

INTRODUCED BY SPAETH

BY REQUEST OF THE DEPARTMENT

OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMIT AND UTILIZATION PROVISIONS OF THE WATER USE LAWS; ALTERING THE FILING AND ISSUANCE REQUIREMENTS OF A CERTIFICATE OF WATER RIGHT; REDUCING THE PUBLICATION REQUIREMENT FOR A PERMIT APPLICATION; REDEFINING A REASONABLE PERIOD OF TIME TO ESTABLISH BONA FIDE INTENT; REVISING THE PROCEDURE FOR GRANTING AN EXTENSION OF TIME FOR COMPLETING AN APPROPRIATION UNDER A PERMIT OR CHANGE AUTHORIZATION; EXPANDING AUTHORITY TO EXPEND MONEY FROM THE WATER RIGHT APPROPRIATION ACCOUNT; SUBORDINATING PRIORITY DATES OF MISSOURI RIVER BASIN RESERVATIONS IN A LIMITED CLASS OF CASES AND EXTENDING DEADLINES FOR RESERVATIONS BELOW FORT PECK DAM; REVISING THE COMPLIANCE PROVISION IN THE TRANSFER OF A WATER RIGHT; AMENDING SECTIONS 85-2-236, 85-2-306, 85-2-307, 85-2-310, 85-2-312, 85-2-318, 85-2-331, 85-2-402, AND 85-2-403, MCA; ~~REPEALING--SECTION--85-2-317,--MCA,~~ AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(2) The department shall provide to the county clerk and recorder of the county wherein the point of diversion or place of use is located quarterly reports and an annual summary report of all certificates of water right issued by the department within the county."

Section 2. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Groundwater may be appropriated only by a person who has either exclusive property rights in the groundwater development works or the written consent of the person with those property rights. Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well or developed spring with a maximum appropriation of less than 100 gallons per minute, EXCEPT THAT A COMBINED APPROPRIATION FROM THE SAME SOURCE FROM TWO OR MORE WELLS OR DEVELOPED SPRINGS

1 EXCEEDING THIS LIMITATION REQUIRES A PERMIT. Within 60 days
 2 of completion of the well or developed spring and
 3 appropriation of the groundwater for beneficial use, the
 4 appropriator shall file a notice of completion with the
 5 department on a form provided by the department at its
 6 offices and at the offices of the county clerk and
 7 recorders. Upon receipt of the notice, the department shall
 8 review the notice and may, before issuing a certificate of
 9 water right, return a defective notice for correction or
 10 completion, together with the reasons for returning it. A
 11 notice does not lose priority of filing because of defects
 12 if the notice is corrected, completed, and refiled with the
 13 department within 30 days or within a further time as the
 14 department may allow, not to exceed 6 months. If a notice is
 15 not corrected and completed within the time allowed, the
 16 priority date of appropriation shall be the date of refiling
 17 a correct and complete notice with the department. A
 18 certificate of water right may not be issued until a correct
 19 and complete notice has been filed with the department. The
 20 original of the certificate shall be sent to the county
 21 ~~clerk--and--recorder--in--the--county--where--the--point--of~~
 22 ~~diversion--or--place--of--use--is--located--for--recording~~
 23 appropriator. The department shall keep a copy of the
 24 certificate in its office in Helena. ~~After recordation,--the~~
 25 ~~clerk--and--recorder--shall--send--the--certificate--to--the~~

1 ~~appropriator.~~ The date of filing of the notice of completion
 2 is the date of priority of the right.

3 (2) An appropriator of groundwater by means of a well
 4 or developed spring, first put to beneficial use between
 5 January 1, 1962, and July 1, 1973, who did not file a notice
 6 of completion, as required by laws in force prior to April
 7 14, 1981, with the county clerk and recorder shall file a
 8 notice of completion, as provided in subsection (1) of this
 9 section, with the department to perfect the water right. The
 10 filing of a claim of existing water right pursuant to
 11 85-2-221 is sufficient notice of completion under this
 12 subsection. The priority date of the appropriation shall be
 13 the date of the filing of a notice as provided in subsection
 14 (1) of this section or the date of the filing of the claim
 15 of existing water right. An appropriation under this
 16 subsection is an existing right, and a permit is not
 17 required; however, the department shall acknowledge the
 18 receipt of a correct and complete filing of a notice of
 19 completion, except that for an appropriation of less than
 20 100 gallons per minute, the department shall issue a
 21 certificate of water right. If a certificate is issued
 22 under this section, a certificate need not be issued under
 23 the adjudication proceedings provided for in 85-2-236.

24 (3) A permit is not required before constructing an
 25 impoundment or pit and appropriating water for use by

1 livestock if the maximum capacity of the impoundment or pit
 2 is less than 15 acre-feet and the appropriation is less than
 3 30 acre-feet per year and is from a source other than a
 4 perennial flowing stream and the impoundment or pit is to be
 5 constructed on and will be accessible to a parcel of land
 6 that is owned or under the control of the applicant and that
 7 is 40 acres or larger. As used in this subsection, a
 8 perennial flowing stream means a stream which historically
 9 has flowed continuously at all seasons of the year, during
 10 dry as well as wet years. However, within 60 days after
 11 constructing the impoundment or pit, the appropriator shall
 12 apply for a permit as prescribed by this part. Upon receipt
 13 of a correct and complete application for a stockwater
 14 provisional permit, the department shall then automatically
 15 issue a provisional permit. If the department determines
 16 after a hearing that the rights of other appropriators have
 17 been or will be adversely affected, it may revoke the permit
 18 or require the permittee to modify the impoundment or pit
 19 and may then make the permit subject to such terms,
 20 conditions, restrictions, or limitations it considers
 21 necessary to protect the rights of other appropriators.

22 (4) A person may also appropriate water without
 23 applying for or prior to receiving a permit under rules
 24 adopted by the board under 85-2-113."

25 Section 3. Section 85-2-307, MCA, is amended to read:

1 "85-2-307. Notice of application. (1) (a) Upon receipt
 2 of a proper application for a permit, the department shall
 3 prepare a notice containing the facts pertinent to the
 4 application and shall publish the notice once in a newspaper
 5 of general circulation in the area of the source once-a-week
 6 ~~for-2-consecutive-weeks~~.

7 (b) Before the ~~last~~ date of publication, the
 8 department shall also serve the notice by first-class mail
 9 upon:

10 (i) an appropriator of water or applicant for or
 11 holder of a permit who, according to the records of the
 12 department, may be affected by the proposed appropriation;

13 (ii) any purchaser under contract for deed, as defined
 14 in 70-20-115, of property that, according to the records of
 15 the department, may be affected by the proposed
 16 appropriation; and

17 (iii) any public agency that has reserved waters in the
 18 source under 85-2-316.

19 (c) The department may, in its discretion, also serve
 20 notice upon any state agency or other person the department
 21 feels may be interested in or affected by the proposed
 22 appropriation.

23 (d) The department shall file in its records proof of
 24 service by affidavit of the publisher in the case of notice
 25 by publication and by its own affidavit in the case of

1 service by mail.

2 (2) The notice shall state that by a date set by the
3 department (not less than 15 days or more than 60 days after
4 the last date of publication) persons may file with the
5 department written objections to the application.

6 (3) The requirements of subsections (1) and (2) of
7 this section do not apply if the department finds, on the
8 basis of information reasonably available to it, that the
9 appropriation as proposed in the application will not
10 adversely affect the rights of other persons."

11 Section 4. Section 85-2-310, MCA, is amended to read:

12 "85-2-310. Action on application. (1) The department
13 shall grant, deny, or condition an application for a permit
14 in whole or in part within 120 days after the last date of
15 publication of the notice of application if no objections
16 have been received and within 180 days if a hearing is held
17 or objections have been received. However, in either case
18 the time may be extended upon agreement of the applicant,
19 or, in those cases where an environmental impact statement
20 must be prepared or in other extraordinary cases, not more
21 than 60 days upon order of the department. If the
22 department orders the time extended, it shall serve a notice
23 of the extension and the reasons therefor by certified mail
24 upon the applicant and each person who has filed an
25 objection as provided by 85-2-308.

1 (2) However, an application may not be approved in a
2 modified form or upon terms, conditions, or limitations
3 specified by the department or denied, unless the applicant
4 is first granted an opportunity to be heard. If no objection
5 is filed against the application but the department is of
6 the opinion that the application should be approved in a
7 modified form or upon terms, conditions, or limitations
8 specified by it or that the application should be denied,
9 the department shall prepare a statement of its opinion and
10 the reasons therefor. The department shall serve a statement
11 of its opinion by certified mail upon the applicant,
12 together with a notice that the applicant may obtain a
13 hearing by filing a request therefor within 30 days after
14 the notice is mailed. The notice shall further state that
15 the application will be modified in a specified manner or
16 denied, unless a hearing is requested.

17 (3) The department may cease action upon an
18 application for a permit and return it to the applicant when
19 it finds that the application is not in good faith or does
20 not show a bona fide intent to appropriate water for a
21 beneficial use. An application returned for any of these
22 reasons shall be accompanied by a statement of the reasons
23 for which it was returned, and there shall be no right to a
24 priority date based upon the filing of the application.
25 Returning an application pursuant to this subsection shall

1 be deemed a final decision of the department.

2 (4) For all applications filed after July 1, 1973, the
3 department shall find that an application is not in good
4 faith or does not show a bona fide intent to appropriate
5 water for a beneficial use if:

6 (a) an application is not corrected and completed as
7 required by 85-2-302;

8 (b) the appropriate filing fee is not paid;

9 (c) the application does not document:

10 (i) a beneficial use of water;

11 (ii) the proposed place of use of all water applied
12 for;

13 (iii) for an appropriation of 4,000 acre-feet a year or
14 more and 5.5 cubic feet per second or more, a detailed
15 project plan including,--but--not--limited--to,--a--reasonable
16 time--line--for--the--completion--of--the--project--and--the--actual
17 application--of--the--water--to--a--beneficial--use,--which--may--not
18 exceed--10--years--from--the--date--of--application,--detailing
19 describing when and how much water will be put to a
20 beneficial use. The project plan must include a reasonable
21 time line, not to exceed 10 years from the time of issuance
22 of a permit, for the completion of the project and the
23 actual application of the water to a beneficial use.

24 (iv) for appropriations not covered in subsection
25 (4)(c)(iii), a general project plan stating when and how

1 much water will be put to a beneficial use; and

2 (v) if the water applied for is to be appropriated
3 above that which will be used solely by the applicant or if
4 it will be marketed by the applicant to other users,
5 information detailing:

6 (A) each person who will use the water and the amount
7 of water each person will use;

8 (B) the proposed place of use of all water by each
9 person;

10 (C) the nature of the relationship between the
11 applicant and each person using the water; and

12 (D) each firm contractual agreement for the specified
13 amount of water for each person using the water; or

14 (d) the appropriate environmental impact statement
15 fee, if any, is not paid as required by 85-2-124."

16 Section 5. Section 85-2-312, MCA, is amended to read:

17 "85-2-312. Terms of permit. (1) The department may
18 issue a permit for less than the amount of water requested,
19 but in no case may it issue a permit for more water than is
20 requested or than can be beneficially used without waste for
21 the purpose stated in the application. The department may
22 require modification of plans and specifications for the
23 appropriation or related diversion or construction. The
24 department may issue a permit subject to terms, conditions,
25 restrictions, and limitations it considers necessary to

1 satisfy the criteria listed in 85-2-311, and it may issue
 2 temporary or seasonal permits. A permit shall be issued
 3 subject to existing rights and any final determination of
 4 those rights made under this chapter.

5 (2) The department ~~may~~ shall specify in the permit or
 6 in any authorized extension of time provided in subsection
 7 (3), limit the time limits for commencement of the
 8 appropriation works, completion of construction, and actual
 9 application of the water to the proposed beneficial use. In
 10 fixing those time limits, the department shall consider the
 11 cost and magnitude of the project, the engineering and
 12 physical features to be encountered, and, on projects
 13 designed for gradual development and gradually increased use
 14 of water, the time reasonably necessary for that gradual
 15 development and increased use. For-good-cause-shown--by--the
 16 permittee,--the--department--may--in--its--discretion--reasonably
 17 extend--time--limits. The department shall issue the permit or
 18 authorized extension of time subject to the terms,
 19 conditions, restrictions, and limitations it considers
 20 necessary to ensure that the work on the appropriation is
 21 commenced, conducted, and completed and that the water is
 22 actually applied in a timely manner to the beneficial use
 23 specified in the permit.

24 (3) The department may, upon a showing of good cause,
 25 extend time limits specified in the permit for commencement

1 of the appropriation works, completion of construction, and
 2 actual application of the water to the proposed beneficial
 3 use. All requests for extensions of time must be by
 4 affidavit and must be filed with the department prior to the
 5 expiration of the time limit specified in the permit or any
 6 previously authorized extension of time. The department may
 7 issue an order temporarily extending the time limit
 8 specified in the permit for 120 days or until the department
 9 has completed its action under this section, whichever is
 10 greater. Upon receipt of a proper request for extension of
 11 time, the department shall prepare a notice containing the
 12 facts pertinent to the request for extension of time and
 13 shall publish the notice in a newspaper of general
 14 circulation in the area of the source. The department may
 15 serve notice by first-class mail upon any public agency or
 16 other person the department determines may be interested in
 17 or affected by the request for extension of time. The
 18 department shall hold a hearing on the request for extension
 19 of time on its own motion or if requested by an interested
 20 party. The department may grant the extension of time in
 21 the absence of a hearing if no requests for a hearing are
 22 received and the extension of time is granted as requested,
 23 or the department may grant the extension of time in a
 24 modified form by following the process established in
 25 85-2-310(2). Subsequent extensions of time may be made in

1 the same manner.

2 ~~(3)~~(4) The original of the permit shall be sent to the
3 permittee, and a copy shall be kept in the office of the
4 department in Helena.

5 ~~(4)~~(5) The department shall provide to the county
6 clerk and recorder of the county wherein the point of
7 diversion or place of use is located quarterly reports and
8 an annual summary report of all water right permits,
9 certificates, and change approvals issued by the department
10 within the county."

11 Section 6. Section 85-2-318, MCA, is amended to read:

12 "85-2-318. Water right appropriation account. There is
13 established a water right appropriation account in the state
14 special revenue fund of the state treasury. All fees
15 collected as provided in 85-2-113 shall be deposited in the
16 account to help pay the expenses incurred by the department
17 for administering and enforcing this part, part 1, part 4,
18 and part 5 of chapter 2, Title 85, and Title 37, chapter
19 43."

20 Section 7. Section 85-2-331, MCA, is amended to read:

21 "85-2-331. Reservations within Missouri River basin.
22 (1) The state or any agency or political subdivision thereof
23 or the United States or any agency thereof that desires to
24 apply for a reservation of water in the Missouri River basin
25 shall file an application pursuant to 85-2-316 no later than

1 July 1, 1989 ~~1991~~ 1989, EXCEPT THAT APPLICATIONS FOR
2 RESERVATION OF WATER BELOW FORT PECK DAM MUST BE FILED NO
3 LATER THAN JULY 1, 1991.

4 (2) Subject to legislative appropriation, the
5 department shall provide technical and financial assistance
6 to other state agencies and political subdivisions in
7 applying for reservations within the Missouri River basin.

8 (3) (A) Before December 31, ~~1991~~ ~~1993~~ 1991, the board
9 shall make a final determination in accordance with 85-2-316
10 on all applications filed before July 1, ~~1989~~ ~~1991~~ 1989, for
11 reservations of water in the Missouri River basin ABOVE FORT
12 PECK DAM.

13 (B) BEFORE DECEMBER 31, 1993, THE BOARD SHALL MAKE A
14 FINAL DETERMINATION IN ACCORDANCE WITH 85-2-316 ON ALL
15 APPLICATIONS FILED BEFORE JULY 1, 1991, FOR RESERVATIONS OF
16 WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM.

17 (C) THE BOARD SHALL DETERMINE WHICH APPLICATIONS OR
18 PORTIONS OF APPLICATIONS ARE CONSIDERED TO BE ABOVE OR BELOW
19 FORT PECK DAM.

20 (4) Water reservations approved by the board under
21 this section have a priority date of July 1, 1985. If the
22 department issues a permit under Title 85, chapter 2, part
23 3, prior to the granting of a reservation under this
24 section, the board may subordinate the reservation to the
25 permit if it finds that the subordination does not interfere

1 substantially with the purpose of any reservation. The board
2 shall by order establish the relative priority of
3 applications approved under this section."

4 Section 8. Section 85-2-402, MCA, is amended to read:

5 "85-2-402. Changes in appropriation rights. (1) An
6 appropriator may not make a change in an appropriation right
7 except as permitted under this section and with the approval
8 of the department or, if applicable, of the legislature.

9 (2) Except as provided in subsections (3) through (5),
10 the department shall approve a change in appropriation right
11 if the appropriator proves by substantial credible evidence
12 that the following criteria are met:

13 (a) The proposed use will not adversely affect the
14 water rights of other persons or other planned uses or
15 developments for which a permit has been issued or for which
16 water has been reserved.

17 (b) The proposed means of diversion, construction, and
18 operation of the appropriation works are adequate.

19 (c) The proposed use of water is a beneficial use.

20 (3) The department may not approve a change in purpose
21 of use or place of use of an appropriation of 4,000 or more
22 acre-feet of water a year and 5.5 or more cubic feet per
23 second of water unless the appropriator proves by
24 substantial credible evidence that:

25 (a) the criteria in subsection (2) are met;

1 (b) the proposed change is a reasonable use. A
2 finding of reasonable use must be based on a consideration
3 of:

4 (i) the existing demands on the state water supply, as
5 well as projected demands of water for future beneficial
6 purposes, including municipal water supplies, irrigation
7 systems, and minimum streamflows for the protection of
8 existing water rights and aquatic life;

9 (ii) the benefits to the applicant and the state;

10 (iii) the effects on the quantity and quality of water
11 for existing uses in the source of supply;

12 (iv) the availability and feasibility of using
13 low-quality water for the purpose for which application has
14 been made;

15 (v) the effects on private property rights by any
16 creation of or contribution to saline seep; and

17 (vi) the probable significant adverse environmental
18 impacts of the proposed use of water as determined by the
19 department pursuant to Title 75, chapter 1, or Title 75,
20 chapter 20.

21 (4) The department may not approve a change in purpose
22 of use or place of use for a diversion that results in 4,000
23 or more acre-feet of water a year and 5.5 or more cubic feet
24 per second of water being consumed unless:

25 (a) the applicant proves by clear and convincing

1 evidence and the department finds that the criteria in
2 subsections (2) and (3) are met; and

3 (b) the department then petitions the legislature and
4 the legislature affirms the decision of the department after
5 one or more public hearings.

6 (5) (a) The state of Montana has long recognized the
7 importance of conserving its public waters and the necessity
8 to maintain adequate water supplies for the state's water
9 requirements, including requirements for reserved water
10 rights held by the United States for federal reserved lands
11 and in trust for the various Indian tribes within the
12 state's boundaries. Although the state of Montana also
13 recognizes that, under appropriate conditions, the
14 out-of-state transportation and use of its public waters are
15 not in conflict with the public welfare of its citizens or
16 the conservation of its waters, the following criteria must
17 be met before out-of-state use may occur:

18 (b) The department and, if applicable, the legislature
19 may not approve a change in appropriation right for the
20 withdrawal and transportation of appropriated water for use
21 outside the state unless the appropriator proves by clear
22 and convincing evidence and, if applicable, the legislature
23 approves after one or more public hearings that:

24 (i) depending on the volume of water diverted or
25 consumed, the applicable criteria and procedures of

1 subsection (2) or (3) are met;

2 (ii) the proposed out-of-state use of water is not
3 contrary to water conservation in Montana; and

4 (iii) the proposed out-of-state use of water is not
5 otherwise detrimental to the public welfare of the citizens
6 of Montana.

7 (c) In determining whether the appropriator has proved
8 by clear and convincing evidence that the requirements of
9 subsections (5)(b)(ii) and (5)(b)(iii) will be met, the
10 department and, if applicable, the legislature shall
11 consider the following factors:

12 (i) whether there are present or projected water
13 shortages within the state of Montana;

14 (ii) whether the water that is the subject of the
15 proposed change in appropriation might feasibly be
16 transported to alleviate water shortages within the state of
17 Montana;

18 (iii) the supply and sources of water available to the
19 applicant in the state where the applicant intends to use
20 the water; and

21 (iv) the demands placed on the applicant's supply in
22 the state where the applicant intends to use the water.

23 (d) When applying for a change in appropriation right
24 to withdraw and transport water for use outside the state,
25 the applicant shall submit to and comply with the laws of

1 the state of Montana governing the appropriation and use of
2 water.

3 (6) For any application for a change in appropriation
4 right involving 4,000 or more acre-feet of water a year and
5 5.5 or more cubic feet per second of water, the department
6 shall give notice of the proposed change in accordance with
7 85-2-307 and shall hold one or more hearings in accordance
8 with 85-2-309 prior to its approval or denial of the
9 proposed change. The department shall provide notice and may
10 hold one or more hearings upon any other proposed change if
11 it determines that such a change might adversely affect the
12 rights of other persons.

13 (7) The department or the legislature, if applicable,
14 may approve a change subject to such terms, conditions,
15 restrictions, and limitations as it considers necessary to
16 satisfy the criteria of this section, including limitations
17 on the time for completion of the change. The department
18 may extend time limits specified in the change approval
19 under the applicable criteria and procedures of 85-2-312(3).

20 (8) If a change is not completed as approved by the
21 department or legislature or if the terms, conditions,
22 restrictions, and limitations of the change approval are not
23 complied with, the department may, after notice and
24 opportunity for hearing, require the appropriator to show
25 cause why the change approval should not be modified or

1 revoked. If the appropriator fails to show sufficient cause,
2 the department may modify or revoke the change approval.

3 (9) The original of a change approval issued by the
4 department must be sent to the applicant, and a duplicate
5 must be kept in the office of the department in Helena.

6 (10) A person holding an issued permit or change
7 approval that has not been perfected may change the place of
8 diversion, place of use, purpose of use, or place of storage
9 by filing an application for change pursuant to this
10 section.

11 (11) A change in appropriation right contrary to the
12 provisions of this section is invalid. No officer, agent,
13 agency, or employee of the state may knowingly permit, aid,
14 or assist in any manner such unauthorized change in
15 appropriation right. No person or corporation may, directly
16 or indirectly, personally or through an agent, officer, or
17 employee, attempt to change an appropriation right except in
18 accordance with this section."

19 Section 9. Section 85-2-403, MCA, is amended to read:

20 "85-2-403. Transfer of appropriation right. (1) The
21 right to use water shall pass with a conveyance of the land
22 or transfer by operation of law, unless specifically
23 exempted therefrom. All transfers of interests in
24 appropriation rights shall be without loss of priority.

25 (2) Failure to comply with the provisions of

1 85-2-402{6} does not render a conveyance or reservation of a
2 water right void, but the right may not be used until the
3 department has approved the change. This subsection applies
4 retroactively, within the meaning of 1-2-109, to a
5 conveyance or reservation made after July 1, 1973."

6 ~~NEW-SECTION.---Section-10.---Repealer.---Section-85-2-317,~~
7 ~~MEA, is repealed.~~

8 NEW SECTION. Section 10. Extension of authority. Any
9 existing authority of the board of natural resources and
10 conservation to make rules on the subject of the provisions
11 of this act is extended to the provisions of this act.

12 NEW SECTION. Section 11. Effective date. This act is
13 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

SENATE

MARCH 25

19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 642

THIRD reading copy (BLUE)
color

REVISES WATER PERMIT LAWS; QUALIFIES MISSOURI BASIN WATER RESERVATIONS

SPAETH (KEATING)

Respectfully report as follows: That HOUSE BILL No. 642

BE AMENDED AS FOLLOWS:

1. Page 2, line 24
Following: "APPROPRIATION"
Insert: "from the same source"

KPK
AND AS AMENDED
BE CONCURRED IN

XXXXXX

XXXXXXXXXX

Thomas F. Keating

SENATOR THOMAS F. KEATING, Chairman.

3-25-87
18
3-25

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

FEBRUARY 13, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Jones on February 13, 1987, at 12:30 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present.

HOUSE BILL NO. 657: REP. PAUL RAPP-SVRCEK, District #51, sponsor, stated many years ago, the fishing was good along the Clark Fork River. In the early 1960's, the Noxon Rapids Reservoir was built, and at the time the dam was being built, there was some promise made of a fish ladder being built along side the dam, in order to preseve the fishery. He stated for one reason or another, the fish ladder was never built, and the dam was, which created a large run of the river reservoir. Since that time, trout fishing in that portion of the river has diminished dramatically. The only way to keep the trout fishing going in that part of the river at the present time, is for the DFWP to constantly stock the river. For the last seven years, the Department has done a commendable job in attempting to establish a small mouth bass fishery in the Noxon Rapids Reservoir. Approximately two years ago, in a matter of a couple days, the water level of the reservoir was dropped, estimates run between 30 to 75 feet, and if effectively destroyed five years of work in establishing this bass fishery in that area. So, that is the reason for the bill, and he pointed out to the committee, that his original intention was to prevent that kind of thing from happening ever again, but he found in drafting the bill, you cannot do that, because you would run afowl of the Federal Energy Regulatory Commission rules and says, we cannot regulate federal power facilities. So, what the bill does, is require operators of hydroelectric facilities to consult with these agencies regarding their operations and how they might affect fisheries once that initial consultation takes place, then in the future, if they are going to alter their operations, such that it would adversely affect the fisheries, they would again have to notify these Departments involved and also provide adequate notice that this draw down is going to take place. He urged the committee to support this bill.

PROPOSERS: STAN BRADSHAW representing Trout Unlimited stated they do support this bill, however, he did have one suggestion that may be considered regarding the Department consultation.

He stated this may be cumbersome, therefore, since the focus of the bill is to preserve fishery resources, it might be appropriate to consider with a single agency only, this being DFWP. Other than that, they do support this bill.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated MEIC does support this bill and he urged the committtee to give it favorable passage.

JEANNE KLOBNAK representing the Montana Wildlife Federation stated MWF supports the bill. They feel any measure to preserve and protect the wildlife in Montana is wholeheartedly supported by MWF.

DAVID LACKMAN, lobbyist, for the Montana Public Health Association stated their association does stand in support of this bill, and he stated they fell this would be a giant step in the protecting of the fisheries and in turn, helping to protect a valuable resource in the State of Montana.

OPPONENTS: MIKE ZIMMERMAN representing the Montana Power Company submitted testimony (Exhibit 1). He stated the net effect of this bill is to quietly assume control over the operations of hydroelectric projects. The federal government however, has always retained the control being sought. If the Federal government did not have this full regulatory power, then administrative inconsistency causing the waste of national resources would be invited. He added they also oppose the bill because it suggests operators of hydroelectric projects are not required to consider the effect of project operations on fisheries. But, fisheries and other wildlife values are protected by regulation and by agreements made with DFWP and other agencies. As a result, MPC urges you to give HB 657 a "do not pass" recommendation.

RUSSELL SMOLDEN a concerned individual, stated he is opposed to the bill, and felt this could be labeled "a good neighbor policy." They feel the intent is commendable, however, they believe we do not need this bill, because these people are already willing to work with the different Departments and he feels this is where the good neighbor policy would enter in. He pointed out, why do we need to fix something that is not broken.

JERRY NYPEN, a Fairfield resident, submitted testimony in opposition to the bill (Exhibit 2). He stated he is employed for the Greenfield Irrigation District, and if this bill is passed, he stated, it would put them in a very subordinate position. It merely says the DFWP will call the shots on how we can administer our projects. He stated they do not deny that we need to work together on developments that could affect fish concerns and health concerns, but the agencies always come at us with such stone-walling tactics, such as is this bill.

He stated their water development and conservation projects are important to them, and to the state they live in, and he urged the committee to not pass this bill.

REP. AL MEYERS, District #51, stated for the record he is opposed to the bill, and feels if the fisheries were protected, he wondered what would happen to the reservoirs and the affect this would have on them. He felt sure this would then lead to bigger and more complicated problems, that would eventually end up in front of the Legislature.

RON SCHOFIELD, a concerned individual, stated he feels this is a bad bill, and the voluntary sharing of information between departments and agencies should exist. Therefore, he is opposed to the bill.

NO FURTHER OPPONENTS

REP. RANEY asked Rep. Rapp-Svrcek after hearing all the opposition, he wondered if he thought the bill was still workable. REP. RAPP-SVRCEK stated definitely.

REP. HARPER stated he would like to understand the nature of the consultation between operators of the dam and DFWP and wanted to know who the fishery biologists are, because in looking at the bill, he stated that maybe the committee would feel better if they knew there was an ongoing consultation and we knew especially before large draw downs were planned, there would be a consultation.

JIM FLYNN, Director, DFWP, stated it is his understanding that when these sorts of projects come on line and are licensed by the Federal government, there is a formal process that involves the Department as a fish and wildlife management agency. When the license has been issued by the Federal authorities and the project is approved and on line, changes in the plans are not necessarily required, however, the Department is generally notified when they retain the plan, and changes are anticipated.

In closing, Rep. Rapp-Svrcek stated how important he felt it was to be given notice at the times these draw downs will occur, in order to prevent this type of destruction from happening. He stated we cannot do anything about what has happened in the past, however, this bill can serve to prevent anything like this from happening in the future. He asked the committee's favorable support of HB 657.

HEARING CLOSED ON HB 657.

HOUSE BILL NO. 651: REP. LOREN JENKINS, District #13, stated in the 70's there were ranches that had reservoirs on them, and wells, in addition to their irrigation.

The Federal government tried to get a handle on this sod busting, and developed a program that the operator could seed back to grass, due to all the marginal ground in the area. He stated the problem that was brought to his attention by FCS in the state water laws, says that if you don't use those water rights regarding a reservoir, well, or irrigation for ten years, they are then considered abandoned and you lose those rights. He stated if this in fact, is marginal ground, you would want these reservoirs on them in order to save the grass which would benefit the ranches. It was proposed if an appropriator which is a farmer or rancher, ceases to use all or part of his appropriation right to the land to which the water is applied to or a beneficial use is contracted under a state or federal conservation program, a set aside in resulting reduction in use of the appropriation right is not represented and the attempt by the appropriator to holding or partially abandoning the appropriation right or if they do not comply with the terms and conditions attached to the right as the appropriation of the water right. He felt this bill would serve it's purpose and felt that no major amendments would be proposed to the bill, because he feels it is written tight enough to serve as a clarification, as well as direction for these people involved.

PROPOSERS: BOB STEPHENS, representing the Montana Grain Growers Association stated they support this bill and urged the committee to do the same.

RAY BECK representing the Conservation District Division for the Department of Natural Resources wished to voice support on behalf of DNRC for this piece of legislation.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated MEIC does support this bill, and he felt it would better accommodate the farmers and ranchers that could fall under this act regarding their water rights involving abandoned sites.

STAN BRADSHAW representing Trout Unlimited stated they do support this bill, and he urged the committee's favorable recommendation.

JEANNE KLOBNAK representing the Montana Wildlife Federation stated MWF does support HB 651 and they feel that any measure to protect the rights of the property owners and the water resource is greatly needed in the State.

NO OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing Rep. Jenkins stated he felt this was an important bill, and he urged the committee to give it a "do pass."

HEARING CLOSED ON HB 651.

HOUSE BILL NO. 661: REP. GARY SPAETH, District #84, stated the 310 permits, basically found in HB 310 and implemented controls at work about ten years ago that work in streambeds in the state, are recently trying to have some sort of review process that can be done with regard to the changing of these streambeds. He stated that review process was set up with the primary Conservation District supervisors involved in cooperation and association with the Department of Fish, Wildlife and Parks, and other interested parties. Obviously, irrigation ditches, companies or whatever, are very much involved in the streams, because they have to do with the water, and everything most likely went along smoothly. However, he was aware of some problems in the state, but it was basically interpreted that they historically had done different types of projects as far as diverting water in streams for the ditch that fills these areas. He stated they were not necessarily reviewed or did not need to be reviewed each time you did it. He stated if you are on a stream irrigating and the stream goes down as it does through the summer, you will have to constantly go up there during the irrigation season and make some adjustments as you go through, particularly some of the fast flowing mountainous type streams in his area, stating Rock Creek would be a good example. He stated the Attorney General came up with a ruling last spring that said of any of those types of diversions were not grandfathered like a lot of the districts were interpreted, and they would have to be regulated and obtain a permit. He stated it takes time to process one of these permits through the conservation districts, having the supervisors come out there and it could occur two or three times during a summer they must go out. This bill addresses that problem, so that those irrigation districts can continue to do pretty much what they have historically been doing out there. He stated he has brought these amendments as a recommendation from everyone involved, and it's what they feel would best work out to accommodate the irrigation companies and ditches in making sure they get their water out of the creek, while at the same time taking care of protecting the streambeds and stream management. He feels this is a prime example of what happens when the parties get together, and their problems can be worked out to the benefit and satisfaction of everyone, and he urged the passage of HB 661 with the proposed amendments.

PROPOSERS: RAY BECK representing the Montana Association Conservation District for the Department of Natural Resources stated DNRC does support the amendments offered by the sponsor.

LARRY ELLIS representing the Water Development Association and the Helena Valley Irrigation District stated both organizations stand in support of this bill.

JIM FLYNN, Director, Department of Fish, Wildlife and Parks submitted testimony (Exhibit 4). He stated the Natural Streambed and Land Preservation Act of 1965 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions. The Conservation Districts have done a commendable job over the years with the administration of this law. HB 661, if amended, should continue with the progress being made in regulating streambed projects. He stated they support the amendments offered by the sponsor. He urged the committee to support HB 661, with the amendments.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated they do support the bill with the amendments offered by the sponsor. He pointed out to the committee, that this would also demand a title change.

STAN BRADSHAW representing Trout Unlimited stated their organization supports this bill and the amendments offered by the sponsor.

OPPONENTS: JEANNE KLOBNAK representing the Montana Wildlife Federation stated they do oppose this bill. She stated as written, HB 661 appears to circumvent any part or purpose of the Natural Streambed and Land Preservation Act. This part being the language that reads "to prohibit unauthorized projects." We are therefore, opposed, and stated the principle as written, contemplates providing a loophole which would in practice exclude projects from 75-7-111, and 75-7-112. Faulty planning of practices may therefore follow. She stated if the committee wishes to recommend passage of this bill, MWF urges them to do so only if they consider the amendments offered by the sponsor.

NO FURTHER OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing Rep. Spaeth stated he would hope the committee would see fit to pass this bill, because he feels it is a important and needed bill.

HEARING CLOSED ON HB 661.

HOUSE BILL NO. 642: REP. GARY SPAETH, District #84, sponsor, stated this is at the request of the Department of Natural Resources.

He stated this bill is basically a revision of the water use laws in the State of Montana, and he stated the three most controversial parts in the bill are on page 13 and 14 that deal with water reservations, in particular, water reservations on the Missouri River, where we are extending the time limits that applications can be submitted and by which the Board of Natural Resources can pass up on those applications. We're extending it from 1989 to 1991 and from 1991 to 1993 respectively, and he stated he understands the parties have looked at this between the in-spring flow applicants and the upper part of the stream as far as water reservations are concerned, are pretty much ready to go and they may be able to accommodate some conflicts that DFWP has concerning those dates, because they want this process to begin immediately. This gives the Board of Natural Resources, under water reservation, the act that was passed in 1985, when a priority date was set as to those applications, to set a priority date and this date would be when the application is passed and approved by the Board of Natural Resources. Priority dates are very important in the usage of water and diversion and the usage for irrigation purposes, as well as in-stream flow purposes.

He stated this was put in there because we did not want to stop water usage and create necessarily an uncertainty out there, so that we would force out types of new water uses in the Missouri Basin. This would allow the Board of Natural Resources to subordinate the reservation of those applications during this interim period, in which these water reservation applications are being processed. If that water rights applicant and the uses they are under do not substantially interfere with the purpose of the water reservation. He urged the committee very strongly to support the passage of this bill.

PROPOSERS: GARY FRITZ representing the Department of Natural Resources stated many of Rep. Spaeth's opening remarks covered the bill quite adequately. However, he felt the need to walk the committee through the bill section by section to explain in further detail. In summary, he stated since 1985, the Department has issued 214 permits, which total 15,048 acre feet, and that for the entire Missouri River Basin, which is about one half of the state. So, there has been some development since July 1, 1985. Statute states the way it is, reservations are eventually adopted by the Board, and these permits and the uses that would be on the ground would be junior to those reservations. We're suggesting that the Board decide which should have priority. He feels this bill will reflect responsible water policy action, to allow the Board to divide the relative priority dates of these permits that are being developed now, and reservations adopted by the Board.

JIM FLYNN, Director, Department of Fish, Wildlife and Parks submitted testimony (Exhibit 5). He stated the Department supports this legislation, however, they have some concern with two portions of the bill located on pages 13 and 14. Subsections 1 and 3 are amended to extend the date for a final determination by the Board from 1991 to 1993. We understand that this is proposed because of the availability of funds to DNRC. While extending the final date is one manner in which to address the funding suggestion, we would suggest another alternative for consideration. The reservation could be limited to the basin upstream from Fort Peck Dam. This would reduce the geographic scope of the reservation and fall within the range of available funds while still being completed by 1991. The second concern is with the amended language in Subsection 4 on page 14. That subsection originally gave a priority date of July 1, 1985 to any reservations granted under this section. The amendment gives a priority date to any permit issued after July 1, 1985, if it does not substantially interfere with the reservation. The section as presented would appear to authorize two priority dates - one for reservation applicants and one for permit applications. In reality, there is little chance that any permit will substantially interfere with a reservation. However, the cumulative impact of a number of permits could affect a reservation. It would seem this amendment only serves to complicate the process.

HARRY ELLIS representing the Montana Water Development Association stated his organization does support this bill and he urged the committee to give it favorable passage.

STAN BRADSHAW representing Trout Unlimited submitted testimony (Exhibit 6). He stated while they have no objections to other parts of the bill, they do object to those sections which have modified those provisions relating to the Missouri River Basin reservation process. First, there seems to be no good reason to make a change in this section at this time. Other than a generalized sense that DNRC does not like this provision, there has been clear indication that the provision as written has caused any problems since its passage. It is premature to modify now. Second, the proposed amendment would encourage speculative filing for permits by offering the encouragement that earlier filings might have a change to convince the board to subordinate the reservations. TU urges the committee to adopt the changes which they have proposed. Without those changes, TU is unable to support HB 642.

OPPONENTS: JEANNE KLOBNAK representing the Montana Wildlife Federation stated they do stand in opposition to this bill, and asked the committee to consider Mr. Bradshaw's changes.

TERRY MURPHY representing the Montana Farmer's Union stated they do oppose and asked the committee to not pass the bill.

NO FURTHER OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

In closing, Rep. Spaeth stated he felt there were some areas that dealt with some controversy, however, he felt these changes being proposed are extremely needed in the bill. He also pointed out to the committee that he would have no objections to changing Section 7. With that he urged the committee to give this bill favorable passage.

HEARING CLOSED ON HB 642.

EXECUTIVE SESSION

HOUSE BILL NO. 246: REP. COBB moved HB 246 DO PASS. He also moved the amendments to the bill and distributed a copy to the committee (Exhibit 7). Question was then called on the amendments, the motion CARRIED unanimously. Rep. Cobb then moved HB 246 DO PASS AS AMENDED. Question being called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-5.

HOUSE BILL NO. 416 STATEMENT OF INTENT: CHAIRMAN JONES pointed out to the committee they had previously acted on HB 416, however, the Statement of Intent finally caught up with the bill, and required action.

REP. RANEY moved to adopt the Statement of Intent. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 631: REP. SIMON moved to TABLE HB 631. Question was called, the motion CARRIED, with Reps. Raney, Asay, and Russell voting NO.

HOUSE BILL NO. 629: REP. HARPER moved HB 629 DO PASS. Rep. Asay stated he felt the large bonding requirement in the bill would be a real problem, and felt an amendment should be offered in this regard. He stated he really had no objection to the regulations enforced, however, he felt the bond section was a problem and should be altered.

REP. KADAS argued this stating he felt the bonding requirement is relative to the potential impacts, and felt this should remain as written in the bill.

Question being called, the motion CARRIED, with Reps. Asay and Cobb voting NO.

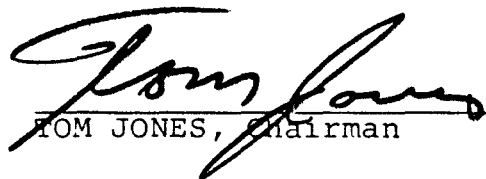
HOUSE BILL NO. 657: REP. SMITH moved HB 657 DO NOT PASS. He felt this was a bad bill.

REP. HARP then made a substitute motion to TABLE HB 657. Question was called, the motion CARRIED, with Reps. Harper, Miles and Cohen voting NO.

HOUSE BILL NO. 651: REP. SMITH moved HB 651 DO PASS. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 661: REP. RANEY moved HB 661 DO PASS. He then moved the amendments to the bill offered by Rep. Spaeth (Exhibit 8). Rep. Harper pointed out in addition to Rep. Spaeth's amendments, this would also demand a title change, and stated this could simply be included with Rep. Raney's original motion. Question was then called on the amendments, the motion CARRIED unanimously. REP. RANEY moved HB 661 DO PASS AS AMENDED. Question was called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-2.

ADJOURNMENT: Being no further business to come before the committee, the meeting was adjourned at 2:47 p.m.


TOM JONES, Chairman

STANDING COMMITTEE REPORT

FEBRUARY 13

19 97

Mr. Speaker: We, the committee on NATURAL RESOURCES

HB 246

report

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

1. Title, line 7.

Strike: "ACTUAL"

Insert: "WRITTEN"

2. Page 2, line 9.

Strike: "A"

Insert: "At least 20 days prior to the public hearing, a"

3. Page 2, lines 11 through 13

Strike: "is" on line 11 through line 13 in its entirety

Insert: "shall cause written notice of any hearing thereon to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given."

4. Page 2, line 14.

Strike: "actual"

Insert: "written"

5. Page 3.

Following: line 3

Insert: "NEW SECTION. Section 2. Extension of authority. Any existing authority of the board of oil and gas conservation to make rules on the subject of the provisions of this act is extended to the provisions of this act."

FIRST

WHITE

reading copy ()
color

STANDING COMMITTEE REPORT

FEBRUARY 13

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report SB 629

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

"AN ACT TO GENERALLY REVISE THE LAWS RELATING TO METAL MINE
RECLAMATION; AND AMENDING SECTIONS 32-4-103, AND 32-4-335, MCA."

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STANDING COMMITTEE REPORT

FEBRUARY 13

19 37

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 651

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

STANDING COMMITTEE REPORT

FEBRUARY 16

19 57

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 661

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ As amended
☐ statement of intent attached

REP. TOM JONES

Chairman

1. Title, lines 5 through 7.

Strike: "AN" on line 5 through "IRRIGATION" on line 7

Insert: "MAINTENANCE AND REPAIR OF EXISTING IRRIGATION FACILITIES"

2. Page 2, lines 5 through 7.

Strike: "an" on line 5 through line 9 in its entirety

Insert: "Customary and historic maintenance and repair of existing irrigation facilities:

(i) that do not significantly alter or modify the stream in contravention of 75-7-102, as determined by the team; or
(ii) for which an annual plan of operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at its option. Any modification to the plan must have prior approval of the district."


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2/13/87

HOUSE BILL NO. 657 (RAPP-SVRCK)

The net effect of this bill is to quietly assume control over the operations of hydroelectric projects. The federal government, however, has always retained the control being sought. The Supreme Court of the United States has concluded that the state has no jurisdiction to regulate hydroelectric projects located on navigable rivers. The major theme emphasized by the Court is that duplicative regulation must be avoided because there can be no infringement on the interstate commerce interests of power generation, navigation and conservation. If the federal government did not have this full regulatory power, then administrative inconsistency causing the waste of national resources would be invited.

Fisheries and other recreational and environmental concerns are protected under current regulation. The Federal Power Act, for example, provides that:

(1) Applicants seeking new licenses or renewals of old licenses, as well as operators of existing projects, must consult with federal and state agencies.

(2) FERC, in renewing old licenses, issuing new licenses, or making modifications of operations permitted by existing licenses, must "give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality."

(3) FERC must monitor and investigate project operations to enforce license conditions intended to protect and enhance fisheries.

(4) Any project operator who violates or refuses to comply with any rule or regulation or license condition shall be subject

to a civil penalty in an amount not to exceed \$10,000 for each day that the violation or refusal continues.

We oppose House Bill No. 657 because it suggests operators of hydroelectric projects are not required to consider the effect of project operations on fisheries. But, fisheries and other wildlife values are protected by regulation (i.e., the imposition of license conditions) and by agreements made with FW&P and other agencies. Here are some examples of license conditions and other measures taken to protect and enhance the recreational and fishery values at MPC's projects:

KERR - Through license conditions, the rate of fill is regulated, as is the maximum and minimum reservoir levels. Water flowing in the river below the dam must not be less than 3200 cfs -- except in certain conditions when it may drop to, but not below, 2200 cfs.

THOMPSON FALLS - In a license application pending before FERC, MPC has outlined operations that would fluctuate the reservoir level only four feet per day. Existing license conditions require MPC to modify project operations to conserve and develop fish and wildlife resources. Further, MPC is required to consult with the state FW&P, U.S.F.S., and U.S.F&W as well as other appropriate state and local agencies to protect natural resource values that include fisheries.

MYSTIC - By license condition, minimum streamflows above and below the powerhouse must be maintained to protect fisheries. If minimum flows can't be maintained, consultation with the Montana FW&P and Federal Fish and Wildlife Service is mandated.

MISSOURI RIVER - By agreement, minimum streamflows below Hebgen Dam must be maintained so that at least 600 cfs is flowing in the Madison River below Quake Lake. During the summer months, minimum flows in the Madison River below Ennis Lake are also maintained at a minimum level of 1100 cfs. Further, MPC attempts to maintain constant river flows so as not to disturb the spring spawning of rainbow trout and fall spawning of brown trout.

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In closing, then, the following should be considered:

(1) The State has no power to effect the control suggested by this bill.

(2) Existing regulation provides ample opportunities for concerned citizen of the state agencies to consult with and seek operational restrictions to protect fisheries and other natural resource values.

(3) Additional regulation may be counterproductive to the sensitive balance between the interests of power generation, recreation and protection of fish and wildlife that is effected by existing federal control.

As a result, MPC urges you to give House Bill 657 a "do not pass" recommendation.

The Montana Power Company
Michael E. Zimmerman

HB 657

Testimony

Jerry Nypen
Fairfield, Montana

I am an employee of Greenfields Irrigation District and testifying in opposition of HB 657

Our District located northwest of Great Falls has the potential for the development of hydroelectric power. We don't admit to be in the power business, however the resources exist and are an excellent way for us to fund conservation efforts on our existing project. Other irrigation districts have the same opportunities - East Bench, Helena Valley, Milk River, to name a few - opportunity to further develop resources for everyone's benefit.

This house bill if passed would put us in a very subordinate position. It merely says that the Department of Fish, Wildlife, and Parks will call the shots on how we can administer our projects.

We don't deny that we need to work together on developments that could affect fish concerns and health concerns, but the agencies always come at us with such stone-walling tactics such as is presented by this bill. I'm always baffled by the one-sidedness. For instance, our irrigation project has had tremendous positive environmental impacts which are never recognized or for which credit is never received. We are responsible for the existence of two nationally known wildlife areas. In addition the existence of two off-stream storage reservoirs which despite their fluctuating levels provide most popular fishing areas.

I could go on, and the point I'd like to make is that we fear that our water development and conservation projects which are so important to our state will not be treated fairly.

Please vote in opposition to HB 657. Thank you.

Amendments to HB 661

(b) Project does not include customary and historic maintenance and repair of existing irrigation facilities an alteration, modification, or diversion of a stream for the purpose of providing for irrigation if the alteration, modification, or diversion is consistent with the previous historical action or usage at the point of diversion.

(i) that does not significantly alter or modify the stream in contravention of 75-7-102, as determined by the team or

(ii) for which an annual plan of operation has been submitted to and approved by the district. The plan is subject to future review and approval by the district at their option. Any modification to the plan must have prior approval of the district.

HB 661
February 12, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The Natural Streambed and Land Preservation Act of 1975 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions.

There have been differences of opinion on methods used to divert water, but to date no one has been denied the right to get irrigation water. In fact, the law states specifically that such a right cannot be denied.

Since 1975, this law has provided an avenue for landowners to obtain new ideas and thoughts regarding alternatives to existing methods of diversion - alternatives that are often better from the standpoint of providing long-term, stable water diversion projects and providing less costly alternatives. State agencies, conservation districts and landowners are currently working on several such projects. This department has supported these efforts through the process, as well as financially.

The conservation districts have done a commendable job over the years with the administration of this law. HB 661, if amended, should continue the progress being made in regulating streambed projects.

We support the amendments proposed by the sponsor. The language the committee has before it, coupled with the amendments offered by the sponsor, will serve to continue the progress that has been made to date.

If irrigation diversions are totally exempted, we fear the stream, the irrigator and adjacent landowners could be adversely affected. The results could be unstable streams, increased erosion, and reduced efforts to provide cost effective alternatives for irrigation methods.

The department supports HB 661, with amendment.

HB 642
February 13, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

While the department supports this legislation, we have some concern with two portions of the bill located on pages 13 and 14.

Subsections 1 and 3 are amended to extend the date for a final determination by the Board from 1991 to 1993. We understand that this is proposed because of the availability of funds to the DNRC. While extending the final date is one manner in which to address the funding suggestion, we would suggest another alternative for consideration.

The reservation could be limited to the basin upstream from Fort Peck Dam. This would reduce the geographic scope of the reservation and fall within the range of available funds while still being completed by 1991.

We suggest this alternative for two reasons. First is that the large capacity of Fort Peck Dam and the dependence by consumptive users on groundwater downstream from Fort Peck make a reservation in that portion of the basin of low priority. In addition, the largest tributary downstream from the dam, the Milk River, is a closed basin.

Second, the extension of a decision by two years will only mean that much longer that the uncertainties will exist on what the decisions will be.

Our second concern is with the amended language in Subsection 4 on page 14. That subsection originally gave a priority date of July 1, 1985 to any reservations granted under this section. The amendment gives a priority date to any permit issued after July 1, 1985 if it does not substantially interfere with the reservation. The section as presented would appear to authorize two priority dates - one for reservation applicants and one for permit applicants.

In reality, there is little chance that any permit will substantially interfere with a reservation. However, the cumulative impact of a number of permits could affect a reservation. We then have the question of which permits are subordinate and which are not. It would seem this amendment only serves to complicate the process.

Under the present law, over 200 permits have been issued in the past 18 months in the basin. All are conditioned to the reservation priority date. This process should continue.

TESTIMONY OF STAN BRADSHAW
MONTANA STATE COUNCIL OF TROUT UNLIMITED
FEBRUARY 13, 1987

Mr Chairman, members of the committee, my name is Stan Bradshaw. I am here today on behalf of the Montana State Council of Trout Unlimited. Our concern with this bill involves the changes to the Missouri River Basin reservation provisions.

While we have no objections to other parts of the bill, we do object to those sections which have modified those provisions relating to the Missouri River Basin reservation process. Specifically, we object to the amendments in sections 7(1), 7(3) and 7(4) of the bill.

Sections 7(1) and 7(3) would set back the completion of the reservation by two years from 1991 to 1993. I have been informed that the reason for the extension is that budget cuts have made it impossible to complete the reservation process by 1991. I also understand that the DNRC feels that it could complete an adjudication of the basin down to Fort Peck Dam by 1991 on the available budget. If that is in fact the case, I would propose an amendment which would provide that the board make a final determination on the reservation process upstream from Fort Peck Dam by December 31, 1991. See the attached amendment.

Section 7(4) would allow the Board to subordinate the reservation to permits issued prior to the granting of the reservation but after the July 1, 1985 priority date. Trout Unlimited objects to this on a number of grounds.

First, there appears to be no good reason to make a change in this section at this time. Other than a generalized sense that the DNRC does not like this provision, there has been no

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clear indication that the provision as written has caused any problems since its passage. It is premature to modify it now.

Second, the proposed amendments would encourage speculative filing for permits by offering the encouragement that earlier filings might have a chance to convince the board to subordinate the reservations. It would encourage a race to file, if you will. The encouragement of such unplanned and hurried filings would violate the spirit of water planning that the Water Development Act embodies.

Finally, the committee should be aware that a number of conservation groups threw their support behind the water development act on the assurance that the current reservation provisions with their 1985 priority date would be included in the act. To emasculate the reservation provisions as proposed by the amendments in this bill would appear to confound the cooperative spirit in which the Water Development Act was conceived. Trout Unlimited urges the Committee to strike the amendments at section 7(4).

Trout Unlimited urges the Committee to adopt the changes which we have proposed. Without those changes, Trout Unlimited is unable to support H.B. 642.

EXHIBIT 6
DATE 2-13-87
HB 642

TROUT UNLIMITED PROPOSED AMENDMENT TO H.B. 642

Page 13, line 23: delete "1991", reinsert "1989".

Page 14, line 3: delete "1993", reinsert "1991".

Page 14, line 5: Delete "1991", reinsert "1989"

Page 14, line 6: after "basin", delete "." and insert "upstream
from Fort Peck Dam."

Page 14, lines 8 through 13, strike everything after "1985." on
line 8 through "reservation." on line 13.

Rep. Cobb

Amendments to HB 246

1. Title, line 7.

Strike: "ACTUAL"

Insert: "WRITTEN"

2. Page 2, line 9.

Strike: "A"

Insert: "At least 20 days prior to the public hearing, a"

3. Page 3, lines 11 through line 13

Strike: "is" on line 11 through line 13 in its entirety

Insert: "shall cause written notice of any hearing thereon to be served upon the record owners of the oil and gas and leasehold interests sought to be spaced or pooled. Notice must be given by mailing the written notice, postage prepaid, to their addresses as shown by the record of the county clerk and recorder at the time the notice is given."

4. Page 2, line 14.

Strike: "actual"

Insert: "written"

VISITORS' REGISTER

NATURAL RESOURCES COMMITTEEBILL NO. HB 642, 651, 657, 661 DATE Feb. 13, 1987SPONSOR JENKINS, Rep. State, South

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Mike Jenkins	LEGISL	651, 657	
Billy E. Martin	U.S. Bureau of Reclamation		
James A. Rowling	U.S. Bureau of Reclamation		
George Ochenski	MT. ENV. INF. CNTR	657, 651 661 W/AMENDS ONLY!	
Don Thomas	Rep. Ted Eby		
Joanne H. Hulse	MWIF	651, 657	642 661
Bob Stephens	Mt. Grain Growers	651	
Mike Zimmerman	MPCO		657
Debi Grammer	MACD	651 661	
Ken Murphy	MT. Farmers Union	651	642 unless amended
Rich Reis	MT Envir Info Center	657, 651	
Jill Ellis	MT Water Resour Privat Assn Helen Valley Irrig Dist	651 661 642 642	657
Ron Schofield	MONTANA WATER DEVELOPMENT ASSOC.	651, 661 642	657
Ray Buck	Conservation Dist. No. 12 DNR	651, 661	
Scott Ross	SEA	657	642
Debra A. Johnson	MT Public Health Assn	657	
Carol Mosket	Mt. Stockgrowers Mt. Cattle Women	651 661	
Larry Fashbender	DNR C	642/651	
Russell D. Smolden	WASHINGTON WATER POWER CO.		657
Jerry Myper	Greenfields Int. Dist.	6	657

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FOR

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 18, 1987

The meeting of the Natural Resources Committee was called to order by Chairman Tom Jones on February 18, 1987, at 12:00 p.m. in Room 312 of the State Capitol.

ROLL CALL: All committee members were present.

EXECUTIVE SESSION

The committee began the meeting by starting with Executive Action before hearings began at 12:30 p.m.

HOUSE BILL NO. 718: Rep. Kadas moved HB 718 DO PASS. Question was then called, the motion CARRIED unanimously.

HOUSE BILL NO. 677: Rep. Smith moved HB 677 DO NOT PASS. Rep. Kadas made a substitute motion to TABLE HB 677. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 729: Rep. Kadas moved HB 729 DO PASS. Rep. Roth stated he would like to have the amendments considered in two groups, those being No.2 and No.10 together, because these deal with the effective date. The remaining amendments change the word "hearing" to "meeting", and he does not think these amendments are necessary. He then moved the No.2 and No.10 amendments DO PASS.

DISCUSSION

Rep. Addy spoke against the amendments stating he feels this is one of those bills that's here because they have a problem now, and when those people are not satisfied with those procedures, they feel they should have been entitled to, and he doesn't know if the problem is as severe as it seemed to be by the people in the neighborhood, but by not giving them the option, you just leave it all up to whatever their imaginations can conjure up.

REP. SIMON spoke in favor of the motion, stating he's attended these meetings, and a number of people were there, and he felt the issue was very carefully explained to them, and we do have a problem that people see we are passing this material, and immediately conjure up some very frightening things, and he felt that the hearing was very fair, lasting about three hours with informational exchange back and forth. He feels it's certainly the spirit of this

particular act that's been provided for at least the Billings facility, if not for the Butte facility, and he sees no reason to bring this in as an immediate effective date and force that facility to go through another process.

QUESTION was then called on the No. 2 and No. 10 amendments only. The motion CARRIED, with Rep. Addy, Peterson, Cobb, Raney and Cohen voting NO.

REP. ROTH stated he did not want the rest of the amendments even considered and Hugh stated this doesn't take a formal motion, they merely leave them unconsidered. Rep. Kadas moved HB 729 DO PASS AS AMENDED. Question was called, the motion CARRIED unanimously. Rep. Cobb moved the Statement of Intent DO PASS. Question being called, the motion CARRIED unanimously. See Standing Committee Report and attached statement of Intent.

HOUSE BILL NO. 642: Rep. Kadas moved HB 642 DO PASS. He distributed amendments (Exhibit 1). He then moved the amendments to the bill. The committee suggested taking the amendments in two different groups as outlined. Rep. Kadas then moved the Kadas I amendment. Question was called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-6.

REP. KADAS then moved the Kadas II amendment. He explained this amendment would mean these people have to pay everything in order of time. He feels this is the fairest way, and he feels we should just keep the order the way it is rather than getting in there and start to monkey around with things, and letting the Board monkey around with things. We shouldn't be changing the rules in the middle of the game.

REP. COBB stated he does oppose the amendment, and feels they should be allowed some leeway there to monkey around with the terminology, and there should always be some leeway left in which this can be done.

REP. PETERSON asked how could this be written in the bill, so we don't give them all that leeway, however, a range they might, in certain instants, take into consideration, if necessary.

REP. COBB stated you really can't compromise; you must either give them complete leeway or give them nothing at all.

QUESTION was called on the Kadas amendment, the motion FAILED, on a 9-9 tie vote by a show of hands.

REP. SIMON moved to amend the bill on page 20, line 18 strike new section 10, this being the repealer section. He feels it would not be that big of a problem for us to take a look at those reservations. He stated there is nothing wrong with taking a look at some of the projects, and he feels this is classified as a "sleeper" in the bill, and he stated he would merely like to put the "sleeper" to "sleep".

QUESTION BEING CALLED, THE MOTION CARRIED unanimously.

REP. KADAS moved the technical amendment. The committee stated they had just taken care of this, by removing the repealer section. Rep. Kadas stood corrected and withdrew his motion.

REP. COBB moved HB 642 DO PASS AS AMENDED. Question being called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-7.

CHAIRMAN JONES had to be excused to present a bill in another committee, so handed the gavel over to Vice-Chairman, Clyde Smith. Rep. Smith then closed Executive Session and opened the hearings at 12:30 p.m.

HOUSE BILL NO. 775: Rep. Gary Spaeth, District No. 84, sponsor, stated this bill at the request of the Department of Natural Resources. The bill transfers the water resources project engineering division in the Department of Natural Resources from DNRC to the Department of State Lands, and what that division does is handle the different numerous water projects from around the state that are owned projects and as far as administrative cost, engineering and other related items. Instead of your constituents going to what they may refer to as the old water board, they will now be going to the Department of State Lands and the Board of Natural Resources. The basic theory and reason behind doing this, is that the DNRC is involved in the adjudication process and the verification under that adjudication process, but they are also a holder of major water rights in the State of Montana, and there may be a potential conflict of interests as a result of being a waters right holder and being involved in the verification process, and that is why the bill is being introduced.

PROPOSERS: LARRY FASBENDER, Director, Department of Natural Resources and Conservation, stated this bill is very simple, and would like to add one thing, that this is not an attempt at empire building on the Department of State Lands, this was the intent of our problem that we thought we had relating to conflict. He stated whether or not that conflict rises to the level where it would challenge in court, as far as they are concerned, they don't really think it

does that, but because of the confusion of conflict there, we thought it was important to resolve that conflict and because State Lands is a land management function agency, when looking at the total scheme of things, it works out well to transfer them over there. He urged the committee to give favorable consideration to this bill.

DENNIS HEMMER representing the Department of State Lands stated they do support the bill. He emphasized that they have discussed this with the Department of Natural Resources, and feel this is the appropriate thing to do. He urged the committee to support this bill.

OPPONENTS: Rick Bondy, Chief of Engineering Bureau, for the Department of Natural Resources stated he does oppose this bill because he has difficulty seeing that this is a problem, and he asked the committee to consider the magnitude of conflict that may be involved. He feels that they should try to maintain the status quo.

NO FURTHER OPPONENTS

REP. KADAS asked Mr. Fasbender if there will be any money saved with this bill resulting from the transfer.

MR. FASBENDER stated the change has nothing to do with money. It would merely serve to resolve the conflict of interest. There is no dollar benefit for the State from the transfer.

REP. ASAY asked Mr. Bondy what the advantage of this bill would be to his division.

MR. BONDY stated it would merely give them more competent direction, which they feel is adequately existing right now.

REP. ASAY then asked Larry Fasbender what advantages will be gained from this.

MR. FASBENDER stated it would serve to resolve challenges in court, involving basic conflicts of interest, if in fact, it did go that far. It would also serve as a better land management function for the Department of State Lands, which would in essence, manage for the Department of Natural Resources.

IN CLOSING, Rep. Spaeth stated he doesn't think we are looking at any economic implications by this bill, and he doesn't think we need to worry that much about the disruption of this move, mainly because we are talking about involving many people for a long period of time, as far as the disruption is concerned. He stated the reason we have

to look at it, is the adjudication process. The Department is involved in this process as far as verification of water rights, and are called upon in several situations by the water court to go out there and investigate different water rights. He stated the Department has become an arm of the court, assisting and assuring in the whole verification process, and also at the same time, in the engineering bureau of the Department, you have people that are managing water projects out there that have substantial water rights in the State. It brings up a very interesting question, and whether it's a big or little question, we have to go through the process and determine whether there is any conflict of interest or not. He urged the committee to look favorably on this bill.

HEARING CLOSED ON HB 775

HOUSE JOINT RESOLUTION NO. 30: Rep. Earl Lory, District No. 59, stated this is a very simple resolution on behalf of the University of Montana. MCA 18-2-102, says that anytime the university system wishes to make any construction in the excess of \$25,000 they must get legislative approval. But it also says that in the event there is no appropriate money for the construction, it may be done by a Joint Resolution, and that is what this resolution does. The University of Montana wishes to put in a well so they can have their own water system. At the present time, they are supplied by Mountain Water System, however, they can make a principle savings if they put in their own water system. That would entail drilling a well which would not interfere with the groundwater, because all water from Missoula is obtained from wells, so they would just be going to draw from their own well rather than from Mountain Water. The project would cost around \$300,000 and the University would borrow this money, with the savings approximately \$76,000 and pay off time is about four and a half years. In order to do this, they do need this Joint Resolution and he urged the committee to give this a "do pass."

PROPOSERS: Bill Lannan, who has worked with the Board of Regents and the Commissioner of Higher Education, stated the Board of Regents has a policy that requires the campuses, if they are seeking a building project more than \$25,000, they must get legislative approval, and he stated that is the reason for the Resolution. He urged the committee to support its passage.

GLENN WILLIAMS, a Missoula resident, stated his support for HJR 30, commenting it will save a substantial amount of money.

NO OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

REP. ASAY moved to go into Executive Session on this Resolution at the present time. Vice-Chairman Smith has no objections to this. Rep. Asay moved HJR 30 DO PASS. Question being called the motion CARRIED unanimously. Rep. Lory closed by graciously thanking the committee.

HEARING CLOSED ON HJR 30.

HOUSE BILL NO. 746: Rep. Ray Brandewie, District No. 49, stated this is a simple bill, however, a much needed bill that is long overdue. HB 746 addressed licensing of on-site sewage treatment systems, and addresses the use of alternative systems, because there are good alternate systems out there that are available. It allows for the county to look at those and to license and monitor the operation of those systems. He stated he does have proponents here that know more about these systems who will explain, and asked if co-sponsor, Rep. Cohen could close on the bill for him, if the committee had no objections. He was required at another meeting.

PROPONENTS: DON ALLEY, representing Northwest Trout Unlimited stated they have made a lot of progress in this area in the last several years. He stated he felt this bill would also serve to help bring new treatment systems into affect, and by doing this, would in turn, replace many old septic systems that are inadequate and do not meet the necessary requirements.

MARK SPRATT, a hydrologist from Kalispell submitted a handout to the committee (Exhibit 2). He stated this is a drawing of the conventional system most people have. He stated if these systems are properly maintained, they will work well for an extended period of time. He stated HB 746 would enable people to update and obtain these systems, so they themselves would eventually be able to maintain them. He thinks this is a long overdue problem that is addressed in this bill, and urged the committee to support the passage of HB 746.

DEL LEONARD, a Whitefish resident, stated he thinks this is a needed bill for many people, and feels there is a degree of ignorance with some people, who actually think these systems require no inspections. He felt this would be a way of informing the people out there that are interested in learning about maintaining their systems and he urged the committee to give this bill as "do pass."

GEORGE OCHENSKI representing the Montana Environmental Information Center stated they do support this bill, and see

this as a way of informing people about their particular systems. He urged the committee to support this legislation.

STAN BRADSHAW representing Trout Unlimited submitted testimony (Exhibit 3). He stated HB 746 addresses a long-standing problem that current law has simply been unable to satisfactorily address. Old, existing systems which were constructed before there was any minimum criteria, have in many cases caused problems with ground and surface waters. Likewise, systems which have been properly permitted, but which have not been properly installed, have resulted in ground and surface water contamination. Under current law, there is simply no way to keep track of the performance of existing systems. HB 746 would provide a method of monitoring existing systems and upgrading them when necessary to protect ground and surface water. T. U. supports the bill and asks for the committee's support as well in passing HB 746.

NO OPPONENTS

NO QUESTIONS FROM THE COMMITTEE

IN CLOSING, co-sponsor Rep. Ben Cohen, stated he feels in some instances, the alternative systems will be the only solutions and the counties have been real reluctant to allow these alternative systems to be used, again, because of vagueness of the rules. He stated the concerns addressed by Trout Unlimited had been addressed and he stated there are amendments coming, however, they are still being final drafted. Finally, if the committee feels that the language in here is mandating all counties to establish an on-site licensing system, it was felt they should have language that would make it possible for the counties to choose whether or not to establish an on-site licensing system, and we would only ask to mandate the on-site licensing if the county is going to allow the placement of alternative systems. He stated if they are going to allow these systems, he feels it is important that you go out and have some kind of monitoring for these systems. He urged the committee to support this bill.

HEARING CLOSED ON HB 746

HOUSE BILL NO. 750: Rep. Bob Gilbert, District No. 22, stated this bill is an act revising the employee Community Hazardous Chemical Information Act relating to the act under federal laws and specify the application of the act as distributed. He stated this act does three things; it clarifies that the act does not cover sealed containers of hazardous chemicals at a distributorship. He stated there

has been much confusion about whether or not distributors are in fact covered by the act. They are not specifically mentioned, although retailers are exempt from this act; it specifies that an employer with the work place is to provide federal hazard communication standards and shall be considered in compliance with the Montana Right-to-Know Act; finally, it replaces Montana's Community Right-to-Know provision with the new Federal Emergency Right-to-Know. He stated we have no funding for the Montana Right-to-Know Act and there is no agency in charge. No one is reporting the violations by amending this law. He stated Hugh Zachheim drafted this bill for him, and complimented Hugh on his expertise on this subject. Hugh was invited to attend the EPA Conference in Washington, D.C. and they invited only those people in the states that they considered most knowledgeable about this area. Rep. Gilbert request he be allowed to testify, because he was so knowledgeable about the bill.

PROPONENTS: HUGH ZACKHEIM, a member of the Environmental Quality Council submitted a summary of the Federal Superfund Reauthorization Act that was passed in October of last year. (Exhibit 4). He stated it does set up the new federal law called the Emergency Planning and Community Right-to Know Act. He stated the way this will work, is that the federal program has become a free standing law by instilling the Superfund Program and Congress has required the Governors in each state to establish a Statewide Emergency Planning Commission. At the same time, the Governor must appoint any local emergency planning committees. These committees are to develop and facilitate the implementation of emergency response plans with participation of facilities who produce, use, or store extremely hazardous substances. This then replaces, in the bill, the current Montana law which requires employers to record those hazardous chemicals to the County Clerk and Recorder. As Rep. Gilbert had stated, there has not been a lot of compliance with that provision of the act. Hugh stated it's important to note one thing that Congress did, including this program for EPA, has directed EPA to determine what chemicals are of community concern.

TOM LAGREE representing the Mountain Bell Telephone Company, stated they are in support of this act because it clarifies some of the cumbersome parts of the Montana Right-to-Know Act. He pointed out, they are not trying to avoid compliance with any of these acts, and urged the committee to support this act.

BEN HAVDAHL representing the Montana Motor Carriers Association stated they are in support of this act with the proposed amendments by the sponsor.

RAY BLEHM, State Fire Marshall, stated he does support this act, and feels it is very important for the community to have that right to know. He urged the committee to support HB 750.

ART WITTICH representing the Montana Power Company stated their support for this act, stating they felt the old system was much too costly and ineffective.

OPPONENTS

George Ochenski representing the Montana Environmental Information Center stated they don't support this act. He stated it's painful to listen to these people bad mouth the Right-to-Know law, when the feds felt it was so good, they copied it almost word for word. Now, they have decided these community right-to-know provisions are a great idea, however, they also copied one of our mistakes. They have not funded this federal Right-to-Know provision, therefore, there is no one out there to carry out the provisions of this act. He stated the Governor does not have an appropriation to do it. So, there are some questions as to whether or not, in fact, we are going to have an effective Community Right-to-Know Act, if this bill passes. If we do, and the Governor appoints these people and if there are local committees to know this information, then we do not have a problem and there is no need to duplicate the efforts. However, he will change his testimony from a opponent to a non-opponent, if in fact, this act does not become law, until the provisions of the federal Right-to-Know act are carried out by this state. If we do this, that will be fine, then we will have what we need. If we don't do this, then all we are doing is gutting our law and waiting for the feds. He thanked the committee for the time to testify.

NO FURTHER OPPONENTS

REP. ADDY asked Rep. Gilbert if he had discussed this with Rep. Driscoll, who was the one to carry the right-to-know bill in the first place, and wondered how this came out.

REP. GILBERT stated he did not discuss this with Rep. Driscoll.

IN CLOSING, REP. GILBERT stated he does have an amendment, stating that in drafting the bill they accidentally made an error. These amendments are necessary to clarify the federal distributor and not the chemical transporter are responsible for distributing the safety sheets and this is existing practice under most state and federal laws which apply to transporters, and would also be responsible for the safety as these are distributed. He stated he didn't intend

for this, it was merely an error in the drafting of the bill. He urged the committee to look favorable on HB 750.

HEARING CLOSED ON HB 750.

HOUSE BILL NO. 770: Rep. Al Meyers, District No.53, sponsor, stated he would quickly introduce the bill, and stated he does have some people who are much more knowledgeable about the bill than himself, who will tell you what the bill does. He stated HB 770 essentially does two things; it simply expands the authority of the Water Rights Compact Commission to do something that they haven't been able to do up until now, and secondly, it would authorize the Joint Board of Control to negotiate for and on behalf of a group of irrigators who are now excluded from this, and these irrigators do have reserved water rights, because many years ago, the water rights were reserved for their use by the federal government.

PROPOSERS: Dan Hogan, an attorney from Helena, who represents the Joint Board of Control and submitted testimony (Exhibit 5). He stated HB 770 has a dual purpose; first, it specifically authorizes the Montana Reserved Water Rights Compact Commission to negotiate with other representative public entities or corporations concerning (a) non-Indian federal reserved water rights, (b) water rights which have their origin in federal reserved waters or (c) water rights approved by the United States Secretary of the Interior. The second purpose of the bill is to specifically authorize Joint Boards of Control established under state law to negotiate on behalf of irrigation districts and their individual members on matters related to non-Indian federal reserved water rights, federal water rights which have their origin in federal reserved water or water rights which have been approved by the U.S. Secretary of the Interior. This legislation is supported by the Joint Board of Control.

CHUCK STIPE, member of the Flathead Irrigation District, stated his support for this bill, emphasizing the negotiation process is important, and urged the committee's support for HB 770.

JO BRUNNER, Executive Director of the Montana Water Development Association, submitted testimony (Exhibit 6). She stated the Water Development Association strongly supports HB 770. Many of their members are irrigation district members and feel this bill would be much to their advantage. She urged the committee to support the passage of HB 770.

OPPOSERS: RICHARD WHITESELL, Billings Area Director, Bureau of Indian Affairs submitted testimony (Exhibit 7). He stated the Bureau of Indian Affairs is aware of and

sensitive to the needs and interests of current water users within the exterior boundaries of Indian reservations. They recognize that water availability may very well depend upon a water users priority date. The real concerns of non-Indian asserting some reserved water rights, lie not with identification and quantification of their rights; but, rather the quantification of the federal or Indian reserved right and their subsequent administration. They believe the current compacting statutes are sufficient in addressing these concerns. Further, if the compacting statutes are amended, the result will be the addition of one or more negotiating entities. The Bureau believes there is a more logical and practical solution of identifying and quantifying reserved rights affecting non-Indians. Non-Indian water users can be given the opportunity to present and discuss with the Department of the Interior, the quantification of their water rights before serious negotiations of federal or reserved rights begins. In addition, these same water users are free to meet with or make their concern known to the Montana Reserved Water Rights Compact Commission. He stated we strongly urge the committee to defeat the bill.

DUE TO THE TIME LIMIT, THE REST OF THE OPPONENTS WERE ASKED TO SIMPLY STATE THEIR NAME, AND HAND IN WRITTEN TESTIMONY IF THEY HAD IT AVAILABLE.

MICHAEL PABLO, member of the Kootenai Tribes, submitted testimony in opposition to HB 770. (Exhibit 8).

CLAY SMITH on behalf of the Attorney General stated they do oppose this bill, and strongly urged the committee to not pass HB 770.

RICHARD REAL BIRD, Crow Tribal Chairman, submitted testimony in opposition to HB 770. (Exhibit 9).

CHRIS TWEETEN, Assistant to the Attorney General and Vice-Chairman of the Compact Commission stated he is here today neither as a opponent nor a proponent, because the Commission has not taken a formal position on this bill. He merely stated he is here and available for any questions that the committee may have.

NO FURTHER OPPONENTS

REP. ASAY asked Mr. Tweeten if the result of these negotiations will result in the water rights being owned by the tribe or by the interested landowners and wondered what the situation will be.

MR., TWEETEN stated that depends very much on the circumstances. The individual landowners own the water rights

that they are entitled to under federal or state law, and he felt the Compact Commission would not be willing to change that. What the compacts that they negotiate with the tribes and federal entities do, is portion waters between, or quantify, in essence, the amount of water that the federal reserve right includes. It will not make any difference in terms of how that water is apportioned among the non-Indian landowners on the reservations and the problem members on the reservation.

REP. ASAY asked him how will this adversely affect the negotiations if these people are allowed to participate.

MR. TWEETEN stated this is a good question, however, they do not know what the affect of this legislation will be on the negotiations. If the tribal members are to be taken for their word, as they testified, it's going to have some affect on their attitudes at the negotiating table, in terms of how willing they are going to be to negotiate. However, at this point, he doesn't know if this could be a serious problem or not. He pointed out, that there are a lot of impacts in this bill, they cannot pinpoint, therefore, they don't know if there will be detrimental affects or not.

REP. MILES stated that one of the people that testified brought up an interesting point, in that there must be other non-Indian groups or non-Indian interests, not just the irrigators, and she wondered as a Compact Commission if they were suppose to be taking into account all of these different interests.

MR. TWEETEN stated the Compact Commission has entered into negotiations with the understanding they are representing the interests of the state of Montana. They understand, that through the legislative process, whatever they negotiate is going to be studied by the scrutiny of this legislature, and is going to have to pass muster to all the people that are interested in compact, and they have the opportunity at that point to make their objections. The Commission tries to anticipate those problems and tries to take them into consideration during the course of the negotiations, but he feels the Fort Peck Compact, as an example, shows that we can do this quite effectively. He stated he is not aware of any specific questions that have been raised by the non-Indian water users on the Fort Peck Indian Reservation or in the disposition of the rights that were made in that compact.

REP. MEYERS closed by stating he felt they had heard some good testimony and urged the committee's recommendation of HB 770.

HEARING CLOSED ON HB 770.

HOUSE BILL NOS. 760 AND 777: Rep. Kadas, District No. 55, stated he is carrying the bills for Rep. Ream who was called away on an emergency and was unable to introduce the bills. Rep. Kadas stated the bills will be done both at the same time, because they are inter-related bills, and he indicated the Department is here and can walk the committee through the bills.

KATHRYN ORR, attorney for the Department of Health, submitted a set of handouts to the committee (Exhibit 10). She stated she would explain the interrelationship between the bills. HB 777 provides for use of RIT interest income to pay for Montana's portion of RCRA enforcement activities and CERCLA or Superfund clean-up and litigation costs. Almost all of the money here serves as a leverage for substantial federal contributions toward preservation of state natural resources. HB 760 is a bill which gives the Board of Examiners the authority to issue bonds, which the Department has deemed to be the most money saving device for raising money which the state may be required to pay in the form of matched money for clean-up costs for the Superfund sites that exist in Montana. In short, HB 760 is more of a house-keeping bill, that is necessary, that the Legislature has to provide and consent for any sort bonding, and the bonding is done by the Board of Examiners and that is by two thirds vote of each House. She stated therefore, what we have is revenue sources that go into a certain account called the Hazardous Waste CERCLA Account, and then ways that those monies may be spent. The bill says that up to one half of the 12% of the RIT interest money would be expended for hazardous waste underground, storage tank, the division of administration, Emergency Investigation for CERCLA Listing and she emphasized that most of the costs throughout the bill, are a spending leverage mechanism. She then explained the charts in detail to the committee and made herself available for any questions the committee may have.

VIC ANDERSON representing the Department of Health, stated they do support these companion bills and he urged the committee to support passage and approval.

GEORGE OCHENSKI representing the Montana Environmental Information Center stated MEIC does support these bills, and he pointed out to the committee, that without them, this in fact, does take away any leverage we may have regarding the clean-up of hazardous waste. He urged the committee's support of HB 760 and HB 777.

HOWARD JOHNSON, Coordinator of the Clark Fork River Basin Project in the Governor's office, submitted testimony

(Exhibit 11). He stated these bills provide the State of Montana with the matching funds necessary to clean up certain Superfund sites in the Clark Fork River Basin and in other areas of the state that have been contaminated by hazardous waste. The bills dedicate 6% of the RIT interest earnings to a special Superfund trust to be used as state match when no responsible party can be found or when the state and EPA deem it necessary to commence clean-up before final negotiation with the responsible party can be concluded. The Governor and I believe that such a use of the RIT fund is exactly what the legislature anticipated when they passed the act. He urged the committee's support of these bills.

RON MARCOUX representing the Department of Fish, Wildlife and Parks, stated their department does support these bills and he urged the committee to give them a "do pass."

JOHN WARDELL, Director, U.S. Environmental Protection Agency, Region VIII Montana Office, submitted testimony (Exhibit 12). He stated he was not going to read through his testimony, however, he hoped the committee would consider his written testimony, and urged the committee to support HB 760 and HB 777.

JEANNE-MARIE SOURIGNEY representing the League of Women Voters and the Montana Sierra Club, stated both organizations support the passage of HB760 and HB 777.

STAN BRADSHAW representing Trout Unlimited submitted testimony (Exhibit 13). He stated TU supports HB 777 for two reasons: First, it focuses resources on remedial actions. Second, it recognized the need to support litigation initiated under CERCLA to assure adequate clean-up of hazardous wastes. These two areas of endeavor are at the heart of CERCLA - the recovery of the state's natural resources from the crippling effects of hazardous waste deposition in the state. Because of the tremendous benefits that it represents for the people of Montana, the State Council of Trout Unlimited urges the committee to give a "do pass."

NO OPPONENTS

REP. ASAY stated the only real question was, what is the shape of the RIT fund, and he stated he felt this should probably be addressed by the Appropriations Committee. He then asked if this is where this bill is going, in fact, to the Appropriations Committee.

GEORGE OCHENSKI stated the lead piece of legislation as the Governor mentioned in his State address, is the 6% he is planning on adding on top of the other 6%, and should be

included in his budget. Whether or not he gets it will in fact, be up to this legislative body. He stated the interest is certainly being generated and the money is there to do this.

NO FURTHER QUESTIONS FROM THE COMMITTEE

HEARING CLOSED ON HB 760 AND HB 777.

EXECUTIVE SESSION

HOUSE BILL NO. 760 AND HB 777: Rep. Kadas moved HB 760 and HB770 together as a pair, DO PASS. Rep. Simon stated he felt it was out of order to move both bills together and felt they needed to act on them separately.

REP. RANEY moved HB 760 DO PASS. Question being called, the motion CARRIED unanimously. REP. RANEY then moved HB 777 DO PASS. Question being called, the motion CARRIED unanimously.

HOUSE BILL NO. 750: Rep. Asay moved HB 750 DO PASS. Rep. Smith then moved the amendments, and asked Hugh to explain. Hugh stated the amendments to HB 750 deal with section 1, the concern expressed was in the language as it appears before you in the bill, and would indicate that chemical transporters also are responsible for passing along material safety data sheets, rather than just distributors. The amendment would amend subsection (f) to read as follows: "the provisions of this chapter do not apply to steel containers of hazardous chemicals", sub (1) would be the language as the existing bill before it came to the committee, "during transportation or while in storage in transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals" and would then go on to sub (2). He stated again, the clarification would indicate the only person in that subsection responsible for distributing the chemical data sheet is the distributor, not the transporter. Question was then called on the amendments, the motion CARRIED unanimously.

REP. COHEN then moved the amendment by Mr. Ochenski and he explained it to the committee. Rep. Cohen stated it reads: "the site becomes effective upon implementation of the Federal Emergency Planning and Community Right to Know Act by the State of Montana." He stated that coordinates this bill with the federal bill. He then suggested perhaps changing this language slightly, and left it up to Hugh for the exact language.

QUESTION was then called on the amendment. The motion CARRIED unanimously.

REP. KADAS moved HB 750 DO PASS AS AMENDED. Question being called, the motion CARRIED unanimously. See Standing Committee Report Nos. 1-5.

HOUSE BILL NO. 775: Rep. Harper moved to TABLE HB 775. Question being called, the motion CARRIED, with Reps. Addy, Cobb, Raney and Grady voting NO.

HOUSE BILL NO. 770: Rep. Meyers moved HB 770 DO PASS.

REP. RANEY stated he has a problem with the bill, and felt it was ten times above what he could comprehend, and felt to bring such a major issue, such as this, this late in the session, he stated is a bad idea. This kind of a bill, should have been introduced sooner, because it should have had more time for discussion. The hearing was so pressed for time today, he felt the time limit on questions and discussion was so limited, how could they expect to make a good decision on this bill.

REP. ADDY stated that he agrees with Rep. Raney and stated this bill involves billions of dollars which will throw a monkey wrench into the negotiation process, which one side of the negotiating bargaining table told us it would. He stated he has a very tough time dealing with this major bill, at this late date in the session.

REP. RUSSELL, then offered a substitute motion to TABLE HB 770.

REP. ASAY stated this is an important bill, and feels it got a "hurry up" hearing, and stated it's too important to give it a "hurry up" Executive Session.

REP. SMITH stated the only way they can postpone the bill, is to have Rep. Russell withdraw her TABLE motion, and could postpone the bill for the day. Rep. Russell stated he would not withdraw her motion to table the bill.

REP. SMITH stated a nondebatable motion was on the floor, to TABLE HB 770.

QUESTION WAS THEN CALLED, THE MOTION FAILED 10-8.

REP. MEYERS THEN MADE A MOTION TO POSTPONE THE BILL UNTIL FRIDAY. QUESTION BEING CALLED, THE MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT: There being no further business, the meeting was adjourned at 3:05 p.m.



TOM JONES, Chairman

DAILY ROLL CALL

NATURAL RESOURCES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEB 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
TOM JONES, CHAIRMAN	X		
CLYDE SMITH, VICE CHAIRMAN	X		
KELLY ADDY	X		
TOM ASAY	X		
JOHN COBB	X		
BEN COHEN	X		
ED GRADY	X		
JOHN HARP	X		
HAL HARPER	X		
MIKE KADAS	X		
AL MEYERS	X		
JOAN MILES	X		
MARY LOU PETERSON	X		
BOB RANEY	X		
RANDE ROTH	X		
ANGELA RUSSELL	X		
BRUCE SIMON	X		
BILL STRIZICH	X		
STAFF: EQC HUGH ZACKHEIM			

STANDING COMMITTEE REPORT

FEBRUARY 13

19 37

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 718

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

FIRST reading copy (WHITE)
color

STANDING COMMITTEE REPORT

FEBRUARY 19

19 37

Mr. Speaker: We, the committee on NATURAL RESOURCES
report HB 729

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☒ statement of intent attached

REP. TOM JONES

Chairman

1. Title, line 7.

Strike: "IMMEDIATE"

2. Page 5, line 5.

Strike: "on passage and approval"

Insert: "July 1, 1937"


FIRST

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STATEMENT OF INTENT

Bill No. 729

It is the intent of the legislature that the department of health and environmental sciences adopt rules to specify that the public hearing requirements provided for in section 1 apply to the owner or manager of a proposed commercial facility for the storage, collection, or transfer of hazardous waste. It is the intent of the legislature that the rules apply equally to facilities subject to permitting under 75-10-406 and to facilities exempt from permitting by virtue of operational characteristics.



STANDING COMMITTEE REPORT

FEBRUARY 19

19 37

Mr. Speaker: We, the committee on

NATURAL RESOURCES

report **SB 642**

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

1. Title, line 17.

Following: "DEADLINES"

Insert: "FOR RESERVATIONS BELOW FORT PECK DAM"

2. Page 13, line 23.

Strike: "1991"

Insert: "1989, except that applications for reservation of water below Fort Peck dam must be filed no later than July 1, 1991"

3. Page 14, line 3.

Following: "(3)"

Insert: "(a)"

Strike: "1993"

Insert: "1991"

4. Page 14, line 5.

Strike: "1991"

Insert: "1989"

5. Page 14, line 6.

Following: "basin"

Insert: "above Fort Peck dam"

6. Page 14.

Following: line 6

Insert: "(b) Before December 31, 1993, the board shall make a final determination in accordance with 35-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam.

(c) The board shall determine which applications or portions of applications are considered to be above or below Fort Peck dam."

7. Page 20, lines 18 and 19.

Strike: section 19 in its entirety

Renumber: subsequent sections



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STANDING COMMITTEE REPORT

FEBRUARY 18

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report SJR 30

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

FIRST reading copy (WHITE)
color

STANDING COMMITTEE REPORT

FEBRUARY 20 19 37

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 760

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman


FIRST

reading copy (WHITE)
color

STANDING COMMITTEE REPORT

FEBRUARY 20

19 87

Mr. Speaker: We, the committee on NATURAL RESOURCES

report HB 777

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

REP. TOM JONES

Chairman

741
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STANDING COMMITTEE REPORT

FEBRUARY 19

19 87

Mr. Speaker: We, the committee on

NATURAL RESOURCES

report **HB 750**

☒ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

RFP. TOM JOHNS

Chairman

1. Page 2, line 5.

Following: "chemicals"

Insert: "(i)"

2. Page 2, line 7.

Strike: "or" through "distributor"

3. Page 2, lines 9 and 10.

Strike: "distributes" on line 9 through "and" on line 10

4. Page 2, line 11.

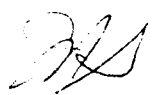
Following: "chemicals"

Insert: "or (ii) at a facility of a distributor, so long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-73-203(1)"

5. Page 6, line 16.

Strike: "passage and approval"

Insert: "implementation of the provisions of the Federal Emergency Planning and Community Right-to-know Act of 1986 in Montana"


FIRST

WHITE

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color

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KADAS I.

1. Title, line 17.
Following: "DEADLINES"
Insert: "FOR RESERVATIONS BELOW FORT PECK DAM"
2. Page 13, line 23.
Strike: "1991"
Insert: "1989, except that applications for reservations of water below Fort Peck dam must be filed no later than July 1, 1991"
3. Page 14, line 3.
Following: "(3)"
Insert: "(a)"
Strike: "1993"
Insert: "1991"
4. Page 14, line 5.
Strike: "1991"
Insert: "1989"
5. Page 14, line 6.
Following: "basin"
Insert: "above Fort Peck dam"
6. Page 14.
Following: line 6
Insert: "(b) Before December 31, 1993, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam.
(c) The board shall determine which applications or portions of applications are considered to be above or below Fort Peck dam."

KADAS II.

1. Title, lines 15 through 17.
Strike: "SUBORDINATING" on line 15 through "AND" on line 17
[Following: "DEADLINES"
Insert: "FOR RESERVATIONS"]
NOTE: Bracketed material above not necessary if the first set of amendments (1 through 7) is adopted.
2. Page 14, lines 8 through 13
Strike: "If" on line 8 through "reservation." on line 13

TECHNICAL AMENDMENT

1. Title, line 18.
Following: "RIGHT;"
Insert: "ELIMINATING THE REQUIREMENT FOR LEGISLATIVE APPROVAL OF GROUND WATER APPROPRIATIONS IN EXCESS OF 3,000 ACRE FEET PER YEAR;"

CONVENTIONAL SYSTEM

EXHIBIT 2
DATE 2-18-87
HB 746

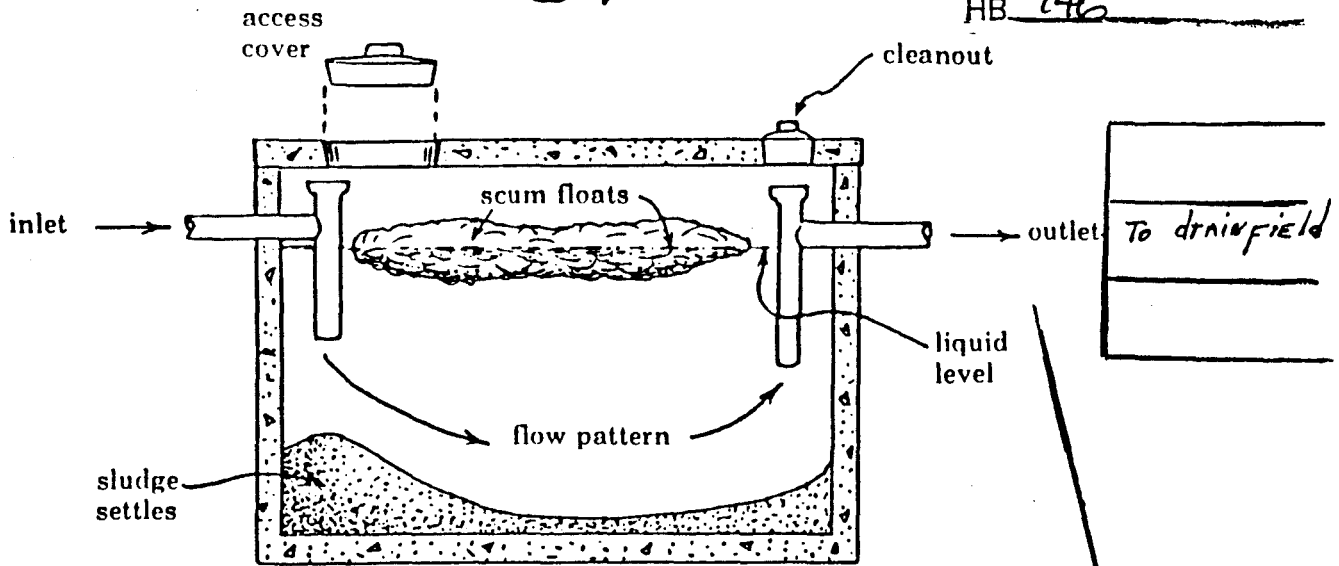
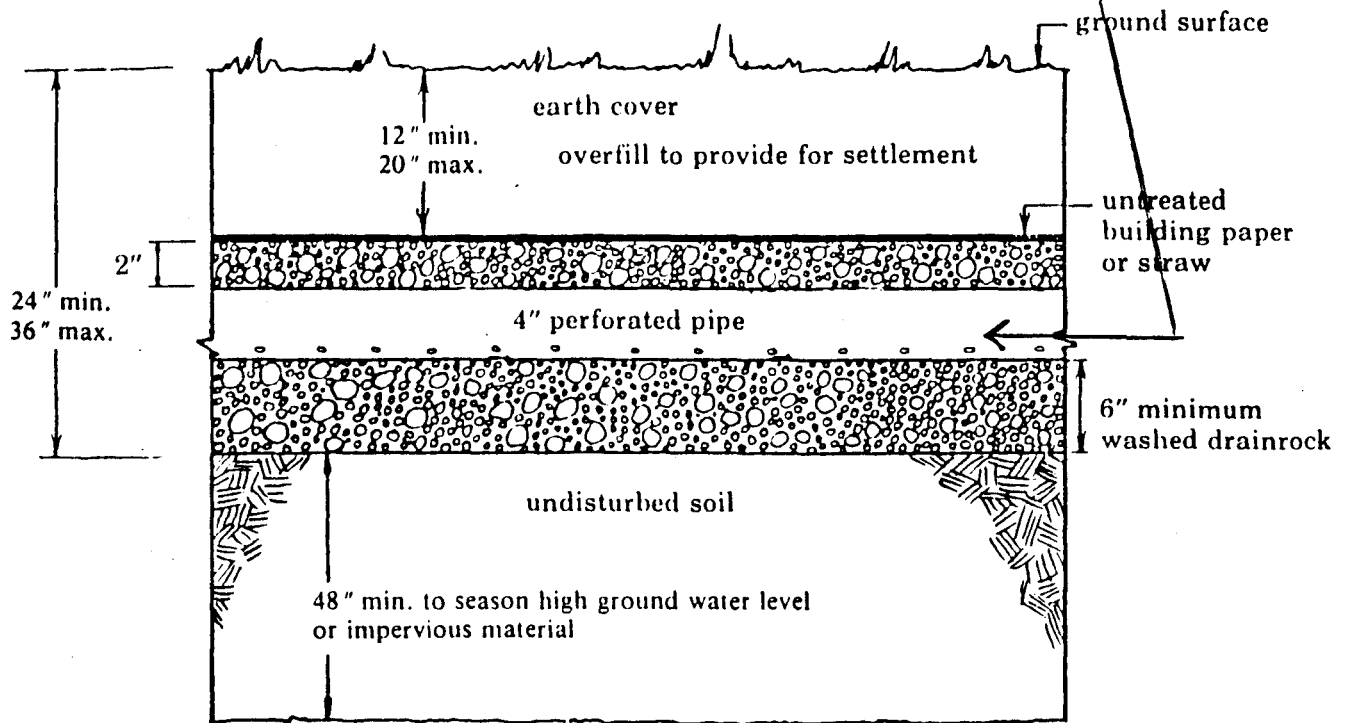


FIGURE 1.
TYPICAL SEPTIC TANK (CUTAWAY VIEW)



LONGITUDINAL SECTION OF TRENCH

HB 746

A TYPICAL ALTERNATIVE ON-SITE SEWAGE TREATMENT SYSTEM.

12-8

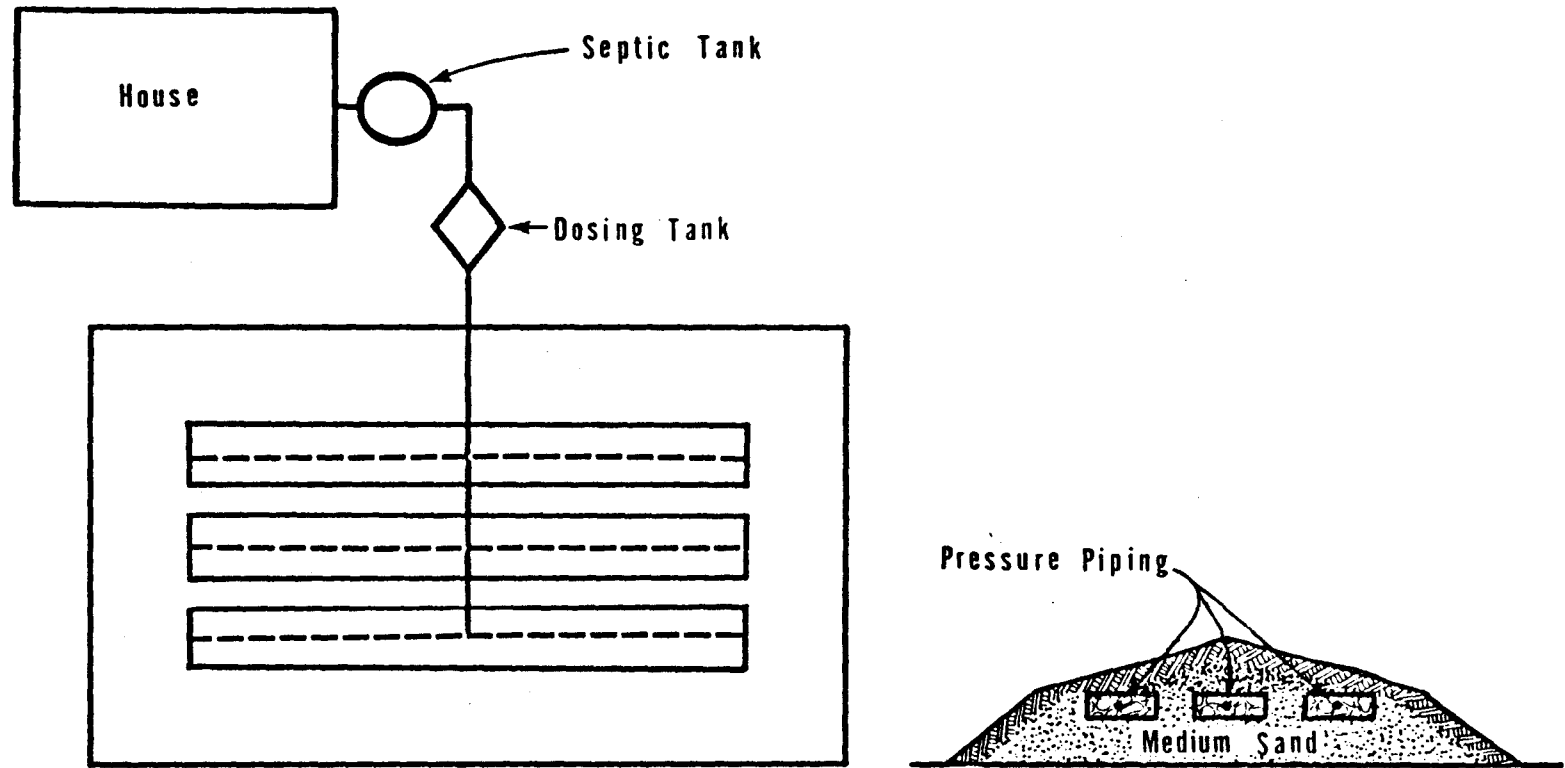


FIGURE 12-1. SAND FILL MOUND WITH PRESSURE DISTRIBUTION TRENCHES

H.B. 746
TESTIMONY OF STAN BRASHAW
MONTANA STATE COUNCIL OF TROUT UNLIMITED
FEBRUARY 18, 1987

Mr. Chairman, members of the committee, I am Stan Bradshaw, and I am here on behalf of the Montana State Council of Trout Unlimited. We wish to endorse an amendment to the bill and, with that amendment, support the bill.

H.B. 746 addresses a long-standing problem that current law has simply been unable to satisfactorily address. Old, existing systems which were constructed before there were any minimum criteria have in many cases caused problems with ground and surface waters. Likewise, systems which have been properly permitted but which have not been properly installed have resulted in ground and surface water contamination. Under current law, there is simply no way to keep track of the performance of existing systems. H.B. 746 would provide a method of monitoring existing systems and upgrading them when necessary to protect ground and surface water.

T.U. supports one amendment, however. As currently written, the bill would allow the placement of alternative systems in high ground water or high gradient areas where no previous systems have existed. As a matter of prudent public policy, the state should not encourage development of new sewage systems in such areas. We recognize, however, that in certain instances where a system is failing, replacement by an alternative system may be necessary. Therefore, T.U. supports amendments which would restrict the waiver of conventional systems to instances when an existing system is being replaced, and which

EXHIBIT 3
DATE 2.18.87
HB 746

would confine the installation of alternative systems to those areas which would otherwise meet the standards promulgated under the Sanitation in Subdivisions Act. With that amendment, T.U. urges the committee to vote DO PASS on H.B. 746.

OCTOBER 17, 1986

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT

XI. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW (Title III)

Title III is a free-standing title (not part of CERCLA) which establishes four major authorities relating to 1) emergency planning, 2) emergency notification, 3) community right-to-know reporting on chemicals, and 4) emissions inventory. There are also other miscellaneous provisions which primarily address the administration and enforcement of this title.

A. Emergency Planning — Requires States to establish a State Commission, emergency planning districts, and local emergency planning committees to develop and facilitate the implementation of emergency response plans with participation of facilities who produce, use, or store extremely hazardous substances. The purpose of such plans is to prepare State local responses to releases of chemicals.

Substances covered by this provision are those "extremely hazardous substances" published in EPA's "Chemical Emergency Preparedness Interim Guidance" (CEPP list). Owners/operators of facilities with CEPP chemicals in excess of thresholds to be published by EPA are required to notify the State Commission that they are subject to this title. The National Response Team is required to publish guidance documents on the preparation and implementation of such plans and Regional Response Teams under CERCLA are authorized to review emergency response plans upon request.

B. Emergency Notification — Requires owners/operators of facilities to notify the State Commission and local committees of releases of both CEPP and CERCLA reportable quantity (RQ) chemicals. This provision establishes different notification requirements for chemicals that are 1) both CEPP and RQ chemicals, 2) CEPP but not RQ chemicals and 3) RQ but not CEPP chemicals. The threshold release levels which trigger the notification requirements are either the RQ amount or an interim level in excess of 1 pound until EPA sets notification quantities. The provision identifies what information is required to be included with the notification.

C. Community Right-To-Know Reporting — Requires owners/operators of facilities to provide information on the manufacture, use, and storage of chemicals present at their

facilities. This information is required to be provided to the State Commission, local committees, and local fire departments and must be made available to the general public. This information is submitted in two different forms: 1) the Material Safety Data Sheets (MSDS) or a list of chemicals for which MSDS are required by the Occupational Safety and Health Act (OSHA), and 2) the Emergency and Hazardous Chemical Inventory Form which include information on the amount and location of MSDS chemicals.

D. Toxic Chemical Release Forms (Emissions Inventory) — Requires EPA to establish an emissions inventory. Requires owners/operators of certain facilities to submit toxic chemical release forms annually to EPA if they manufacture, process, or use specific toxic chemicals in excess of certain threshold levels. Requires EPA to compile this information and make it readily available to the public through such means as computerized data bases.

E. Miscellaneous Provisions —

1) *Emergency Training* — Authorizes EPA and other appropriate agencies carrying out existing programs to provide emergency training with special emphasis on hazardous chemicals. FEMA is to be appropriated money for making grants to State and local governments and universities to improve emergency response preparedness.

2) *Review of Emergency Systems* — Requires EPA to conduct a review of monitoring and detection devices present at facilities as well as a study of the status of current technological capabilities in this area.

3) *Trade Secrets, Information to Health Professionals, and Public Availability of Information* — Authorizes persons to withhold trade secret information when certain tests are met, requires owners/operators to submit information to health professionals upon request, and requires governmental entities who receive information under this title to make such information available to the general public.

4) *Enforcement and Citizen Suits* — Establishes civil, administrative, and criminal penalties for persons (owners/operators), and authorizes citizen suits against persons (owners/operators and government entities) for failure to comply with various requirements in this title.

5) *Federal Preemption* — Nothing in this title preempts State or local law, or affects any obligations or liabilities under other Federal laws (except for MSDS requirements).

6) *Mass Balance Study* — Requires EPA to arrange for the National Academy of Sciences to evaluate the efficacy of requiring mass balance reporting relating to emissions.

EXPLANATION OF HB 770

HB 770 has a dual purpose: First, it specifically authorizes the Montana Reserved Water Rights Compact Commission to negotiate with other representative public entities or corporations concerning (a) non-Indian federal reserved water rights, (b) water rights which have their origin in federal reserved waters or (c) water rights approved by the United States Secretary of the Interior.

The second purpose of HB 770 is to specifically authorize Joint Boards of Control established under state law to negotiate on behalf of irrigation districts and their individual members on matters related to non-Indian federal reserved water rights, federal water rights which have their origin in federal reserved water or water rights which have been approved by the United States Secretary of the Interior.

Why HB 770

Presently the Montana Reserved Water Rights Compact Commission pursuant to state law is conducting negotiations with the Confederated Salish and Kootenai Tribes and the Federal Government in an attempt to divide and apportion waters on the Flathead Indian Reservation. These negotiations are taking place to the exclusion of the Joint Board of Control for the Flathead, Mission, and Jocko Valley Irrigation Districts and their individual members, all of which reside within the boundaries of the Flathead Indian Reservation. There are more than 1700 individual irrigators represented by the Joint Board of Control and the individual irrigation districts. These irrigators possess non-Indian reserved water rights, water rights which have their origin in federal reserved waters, and water rights which were approved and recognized by the United States Secretary of the Interior. Because the irrigators have not been a party to any of the negotiations between the Compact Commission, the Tribes and the Federal Government, the Compact Commission is involved in a process of apportioning and dividing water to which these irrigators have a claim and right, but without irrigator participation in the process.

The legislation being presented specifically allows the Compact Commission to negotiate with other public representative entities such as the Joint Board of Control who represent people claiming non-Indian federal reserved water rights or other federal water rights. It is legislation designed to bring fairness and equity to the apportionment of federal waters by allowing all affected entities to be fully and fairly represented.

This legislation is supported by the Montana Water Development Association.

WITNESS STATEMENT

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2.18.87

1770

NAME J. Bruner BILL NO. HB 770
ADDRESS 2015 1/2 9th Ave DATE 2/18
WHOM DO YOU REPRESENT? Montana Water Development Association
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Montana Water Development Association strongly supports HB 770. Many of our members are Irrigation Districts and several of them are located adjacent to Indian Reservations. The Flathead Joint Board of Control is a member of MWDA, so we are greatly concerned with the problem contained in this bill - participation in the negotiation process by those so vitally involved, as is the Joint Board.

It's difficult to understand the reasoning ~~that~~ ~~the~~ of the process does not take into consideration an entity as of such a magnitude. Our justice system allows ~~the~~ the perpetration of the most heinous crimes a day in court - a defence position. ~~What~~ ~~does~~ ~~the~~ ~~process~~ ~~allow~~ ~~for~~ ~~the~~ ~~perpetration~~ ~~of~~ ~~the~~ ~~most~~ ~~heinous~~ ~~crimes~~ ~~a~~ ~~day~~ ~~in~~ ~~court~~ ~~?~~

Every one of us here will protest other parties making decisions concerning our welfare without allowing us to at least speak for ourselves - to have our concerns taken into consideration - yet we have here a party so critically affected, as is the Joint Board of Control, to sit by and let their future be decided by without the request opportunity to participate in those decisions.

We ask that you pass HB 770

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2-18-87

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GOOD AFTERNOON - I AM RICHARD WHITESELL, BILLINGS AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS. I AM HERE TO TESTIFY ON BEHALF OF THE
INDIAN TRIBES OF MONTANA AND THE BUREAU OF INDIAN AFFAIRS.

THE UNITED STATES DEPARTMENT OF THE INTERIOR SUPPORTS THE
NEGOTIATION OF INDIAN RESERVED WATER RIGHTS. MONTANA HAS PROVIDED
A FAVORABLE FORUM FOR SUCCESSFUL NEGOTIATION THROUGH ITS CURRENT
STATUTE AND ITS COOPERATIVE EFFORTS. WE BELIEVE THE CURRENT
PROCESS IS SUFFICIENT AND MONTANA'S COMPACTING LAWS DO NOT NEED TO
BE AMENDED.

THE BUREAU OF INDIAN AFFAIRS IS AWARE OF AND SENSITIVE TO THE
NEEDS AND INTERESTS OF CURRENT WATER USERS WITHIN THE EXTERIOR
BOUNDARIES OF INDIAN RESERVATIONS. WE RECOGNIZE THAT WATER
AVAILABILITY MAY VERY WELL DEPEND UPON A WATER USERS' PRIORITY
DATE. WE ARE ALSO AWARE THAT NON-INDIAN SUCCESSORS IN INTEREST TO
TRUST LAND MAY HAVE A PRIORITY DATE WHICH IS THE SAME AS THE
RESERVATIONS.

THE MONTANA COMPACTING STATUTES ARE DESIGNED TO QUANTIFY THE
FEDERAL OR INDIAN RESERVED RIGHT; WHICH IS GENERALLY YET TO BE
IDENTIFIED. NEGOTIATIONS CENTER ON QUANTIFYING AN AMOUNT OF WATER
WHICH WILL BE PUT TO USE AT SOME UNSPECIFIED FUTURE DATE WITH WHAT
WILL OFTEN BE A SENIOR PRIORITY DATE. CONVERSELY, QUANTIFICATION
OF ACTUAL WATER USE DOES NOT INVOLVE SUCH EXPERT SPECULATION AND
IS ADEQUATELY ADDRESSED IN THE STATE APPROPRIATION SYSTEM. ACTUAL
MEASUREMENTS ARE MADE AND HISTORICAL USE FACTS ARE SUBMITTED AS
EVIDENCE.

THE REAL CONCERNS OF NON-INDIAN ASSERTING SOME RESERVED WATER
RIGHT LIE NOT WITH IDENTIFICATION AND QUANTIFICATION OF THEIR
RIGHTS; BUT, RATHER THE QUANTIFICATION OF THE FEDERAL OR INDIAN
RESERVED RIGHT AND THEIR SUBSEQUENT ADMINISTRATION. WE BELIEVE
THE CURRENT COMPACTING STATUTES ARE SUFFICIENT IN ADDRESSING THESE
CONCERNS. FURTHER, IF THE COMPACTING STATUTES ARE AMENDED, THE
RESULT WILL BE THE ADDITION OF ONE OR MORE NEGOTIATING ENTITIES.

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THIS WILL FURTHER COMPLICATE AN ALREADY INVOLVED PROCESS AND WILL OBVIOUSLY HINDER THE DEVELOPMENT OF A COMPACT.

THE BUREAU OF INDIAN AFFAIRS BELIEVES THAT THERE IS A MORE LOGICAL AND PRACTICAL SOLUTION OF IDENTIFYING AND QUANTIFYING RESERVED RIGHTS AFFECTING NON-INDIANS. NON-INDIAN WATER USERS CAN BE GIVEN THE OPPORTUNITY TO PRESENT TO AND DISCUSS WITH THE DEPARTMENT OF THE INTERIOR THE QUANTIFICATION OF THEIR WATER RIGHTS BEFORE SERIOUS NEGOTIATIONS OF FEDERAL OR RESERVED RIGHTS BEGINS. IN ADDITION, THESE SAME WATER USERS ARE FREE TO MEET WITH OR MAKE THEIR CONCERN KNOWN TO THE MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION.

WE BELIEVE THAT PASSAGE OF THIS BILL MAY JEOPARDIZE THE NEGOTIATION POSITION OF MOST, IF NOT ALL, OF THE MONTANA INDIAN TRIBES. THIS WILL LEAD TO COSTLY AND LENGTHY LITIGATION WHICH WORKS TO THE DETRIMENT OF THE UNITED STATES AND THE STATE OF MONTANA. WE STRONGLY URGE THE DEFEAT OF THIS BILL.

WITNESS STATEMENT

NAME Mr. Noel T Gable BILL NO. HB 770

ADDRESS PO Box 5, Missoula, MT

WHOM DO YOU REPRESENT? Confederated Salish & Kootenai Tribes

SUPPORT represent 6,000 tribal members OPPOSE ☒ AMEND ☐

COMMENTS: The C&KT of the Flathead Reservation
oppose HB 770. This Bill would put too much pressure
on the Compact Commission and ^{we believe} would cause all
tribes to reconsider their position towards negotiating
with the State, Compact Commission. The Tribes and
Compact Commission have gained respect for each
other and if this Bill is passed the Legislature
will have torn down the trust that has been
built. We went through this same process with
the State in regards to the Ft. Peck Water
Compact. We had to rebuild bridges torn down by
mis trust. Although the C&KT are now in negotiations
with the Compact Commission and we would like
to stay in talks with the State of Montana, if
this Bill is passed The Tribal Council will reconsider
its position. ^{to the C&KT withdraw from negotiations as soon as possible} Because of the short notice of
this hearing the C&KT will submit written
comments on HB 770. ^{Mr. Hoven stated:} JPA C. represents 113,000
acres of fee lands what about the fee owners of the other
48,000 of fee lands.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.



CROW TRIBAL COUNCIL

P.O. Box 159
Crow Agency, MT 59022

RICHARD REAL BIRD, Chairman
JEROME HUGS, Vice Chairman
TRUMAN C. JEFFERSON, Secretary
CARLTON NOME, SR., Vice Secretary
Crow Country

Crow Country

February 17, 1987

House of Natural Resources Committee
Hearing for House Bill 770

Position Statement of Richard Real Bird
Crow Tribal Chairman
Crow Tribal Council

Dear Committee Members:

Thank you distinguished members of the committee for allowing the Crow Tribe to submit this statement regarding House Bill 770. The Crow Tribe is against any subdivision created by the State of Montana other than Montana Reserved Water Rights Compact Commission pursuant to the Court.

The reserved Water Rights of the Crow Indian Reservation is a matter of paramount importance to the Crow Tribe and the State of Montana.

The proposed House Bill 770 would cause confusion, distrust and uncertainty in the Crow Tribe's discussion with the State of Montana. The Crow Tribe is mandated to deal with the Montana Reserved Water Rights Compact Commission in its extension to continue negotiations with Indian Tribes in the State of Montana. The most essential requirements for any successful negotiation are mutual trust and confidence. Without that, there can be no agreement or even any worthwhile discussions.

It is very difficult even under the best of circumstances to achieve that mutual trust and confidence. The State of Montana has to be absolutely clear about the path they wish to pursue.

It is our understanding the purpose of establishing the compact commission was so that the State and the tribe could be open and flexible and would be able to agree to a solution in one situation without necessarily setting a precedent for other situations. House Bill 770 is causing complications and apprehension for the Crow Tribe in its dealing with the State.

EXHIBIT 9
DATE 2-18-87
HB 770

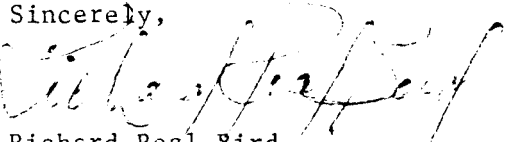
Position Statement of Richard Real Bird
Feb. 17, 1987

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2-18-87
770

The Montana Legislature had wisely recognized that we do not necessarily have to approach our water problems as adversaries, pertaining to the development of the compact commission.

Based on the unique circumstances on the Crow Reservation, I believe that Water negotiations could be fruitful if mutual trust and confidence are restored.

Sincerely,



Richard Real Bird
Crow Tribal Chairman
Crow Tribal Council

Overview of Bonding Bills

- ° HB-777 provides for use of RIT interest income to pay for Montana's portion of RCRA enforcement activities and CERCLA or Superfund clean-up and litigation costs.
- ° Almost all of the money here serves as a leverage for substantial federal contributions toward preservation of state natural resources.
- ° Up to 6% of the RIT interest income is allocated for RCRA program activities in a state-federal match ratio of 1 to 3 (1 state dollar to every 3 federal dollars).
- ° An additional 6% is allocated for any costs which the state may have to incur for clean-up of one or all of the 7 Superfund sites if the responsible parties or PRP's refuse to pay for these costs themselves.
- ° The way this works is that if the PRP walks away, the state has a choice about providing money as a match to federal dollars in a ratio of 10% state to 90% federal money. If PRP's take no responsibility for clean-up, the state's match obligation could amount to \$6 million in the next biennium.
- ° If the state fails to put up any money, no clean-up will occur.
- ° It is important that the state act aggressively to leverage for scarce Superfund dollars.
- ° Also, the state has a limited period in which to participate in the clean-up which is anticipated to occur in the next five years.
- ° The bonding mechanism in the bill is advantageous because it would raise the necessary state match without raiding the general fund.
- ° The use of the RIT money as designated in the bill is consistent with the purpose of the RIT fund, which is to protect Montana's resources affected by the extraction of mineral and other non-renewable resources.
- ° Without the bill there would be no hazardous waste management program, and potentially Montana's dump sites would never be cleaned up.
- ° House Bill 760 provides the authority to the Board of Examiners to issue bonds.

Funding for CERCLA Lawsuits

- ° State has filed an ongoing lawsuit for recovery of loss of natural resources in the upper Clark Fork Basin -- one of Montana's most precious natural resources.
- ° The potential for recovery in this geographical area and other areas is enormous and therefore warrants the full-time dedication of legal and technical staff for evaluation and pursuit of these claims.
- ° Time is of the essence here because of the need to protect the State's interests in the ongoing lawsuit, for instance for evaluation of settlement offers which have already been made, and because there is a statutory deadline beginning in 1989 for filing natural resource claims.
- ° The appropriation is essentially a loan because it is all recoverable for the defendants.
- ° Any future damages collected are by statute put into a trust fund to manage or to help restore natural resources. The trust fund could become a tremendous development asset for several depressed areas in the state.
- ° The funding is an especially appropriate use of the RIT fund.
- ° The \$200,000 is for 2 full-time technical and legal staff, contracted services, support services, and office overhead, to be housed at the Department of Health and Environmental Sciences.
- ° The money is intended for preliminary work necessary for evaluating the size and availability of claims in the state; it is not sufficient for litigation costs.
- ° Anticipated technical activities of the staff are: assess impact of Department of Interior regulations and the new Superfund amendments; integrate existing data with damage assessment; monitor nationwide developments in the law; develop evidence; continue in settlement negotiations.

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2-18-87

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Superfund Fact Sheet

Superfund is a federal program to investigate and if need be clean up hazardous substances which have been dumped, spilled, or allowed to escape into the environment. If investigations determine an actual or potential threat to public health or environment, clean up or control is required.

A basic premise of the program is that those responsible for the problem should pay for the clean up. However, a large fund has been established to provide money for clean up at sites where responsible parties no longer exist or are financially unable to pay for clean up. The fund also supports administrative, oversight and investigative requirements; and litigation against responsible parties who refuse to participate. Punitive damages up to three times the total response costs can be assessed by a federal court against non-participating responsible parties.

The Superfund program depends a great deal upon state involvement. The EPA, the federal agency which administers Superfund, can conduct investigations; emergency actions; and even require cleanup of sites with a participating responsible party without active state participation. However no action can be taken at sites where responsible party funding is not available without substantive state involvement.

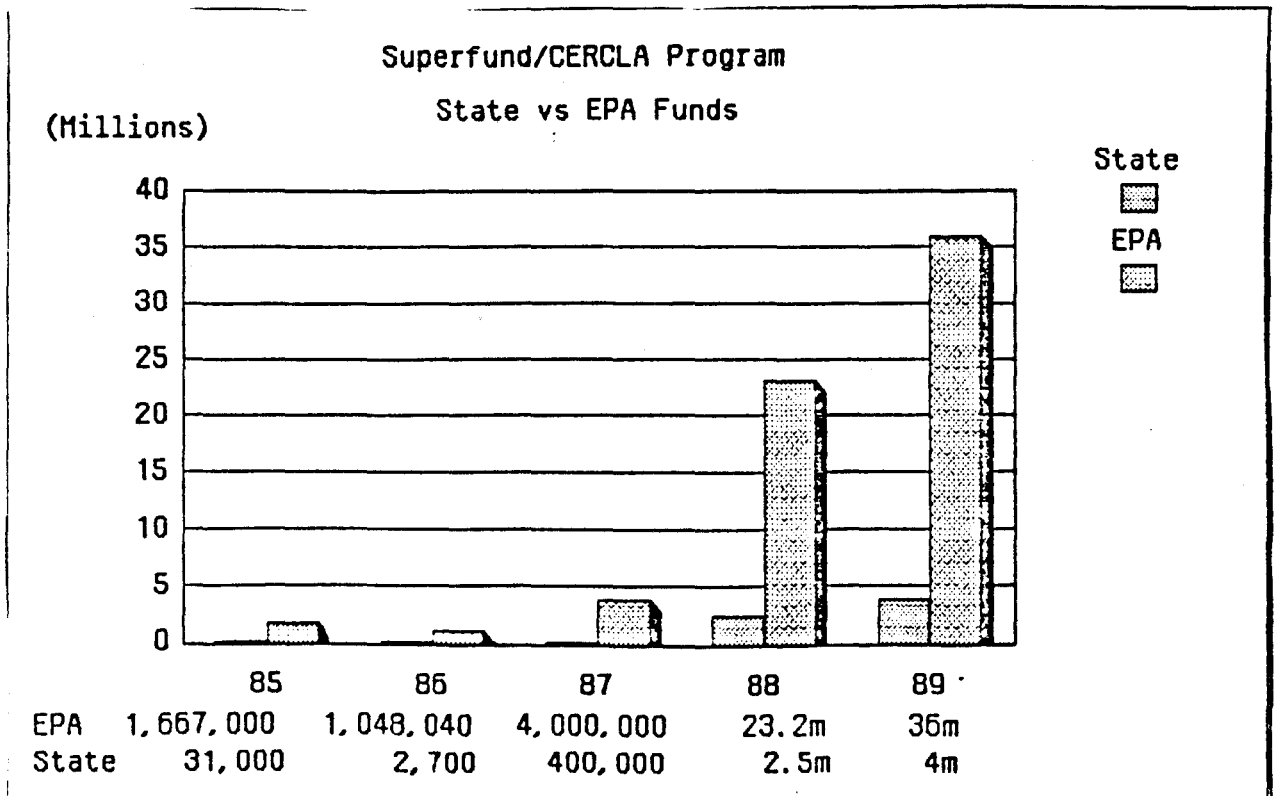
There are potentially several thousand sites in the country that are eligible for federal funding. Given the typical cost of a site response, the number of sites far exceeds the money available. Aggressive action on the part of a state tends to insure more applicable sites get on the priority list which inturn increases the proportional amount of monies expended on clean up in the state.

2-18-87

Fact Sheet
HB777

- Lateness of this bill because it is a very complicated program, and a lot of time went into the drafting.
- Responsible parties are going to be tabbed for all costs including investigation and clean-ups. Only when no one can be identified will the Superfund itself and the state matching funds be used.
- Clean-ups and investigations are very labor-intensive; involve well drilling, sampling, lab analysis, design of soil cover, dikes construction activities, including heavy equipment operations.
- State must send a clear signal to responsible parties that we're serious about cleaning up sites.
- Next five years are a window of opportunity for Montana to get a large contribution of federal funds to investigate and clean up these sites.
- Superfund was reauthorized by Congress in October, 1986 for another five years. \$8.5 billion was allocated for the program.
- Currently there are nine National Priority List (NPL) sites in Montana. These are:
 - Asarco Smelter, East Helena
 - Anaconda Smelter, Anaconda
 - Idaho Pole, Bozeman
 - Mouat Industries, Columbus
 - Milltown, Missoula
 - Champion Paper, Libby
 - BN Somers Tie Treating Plant, Somers
 - Montana Pole, Bozeman
 - Silver Bow Creek, Butte-Deer Lodge
- To date about 130 additional sites that may pose a contamination problem have been identified in the state. It is likely that some of these sites will prove to be eligible for federal funding.
- Since 1983 it is estimated that over \$10 million has been spent on Montana Superfund activities by the EPA, responsible parties and the state. To date the state's direct financial share has been about \$33,000.

- Several major sites are nearing completion of the investigative phase and the beginning of the corrective action phase. As a result, it is likely that state and federal costs will increase. The following table provides an estimate of these expenses.



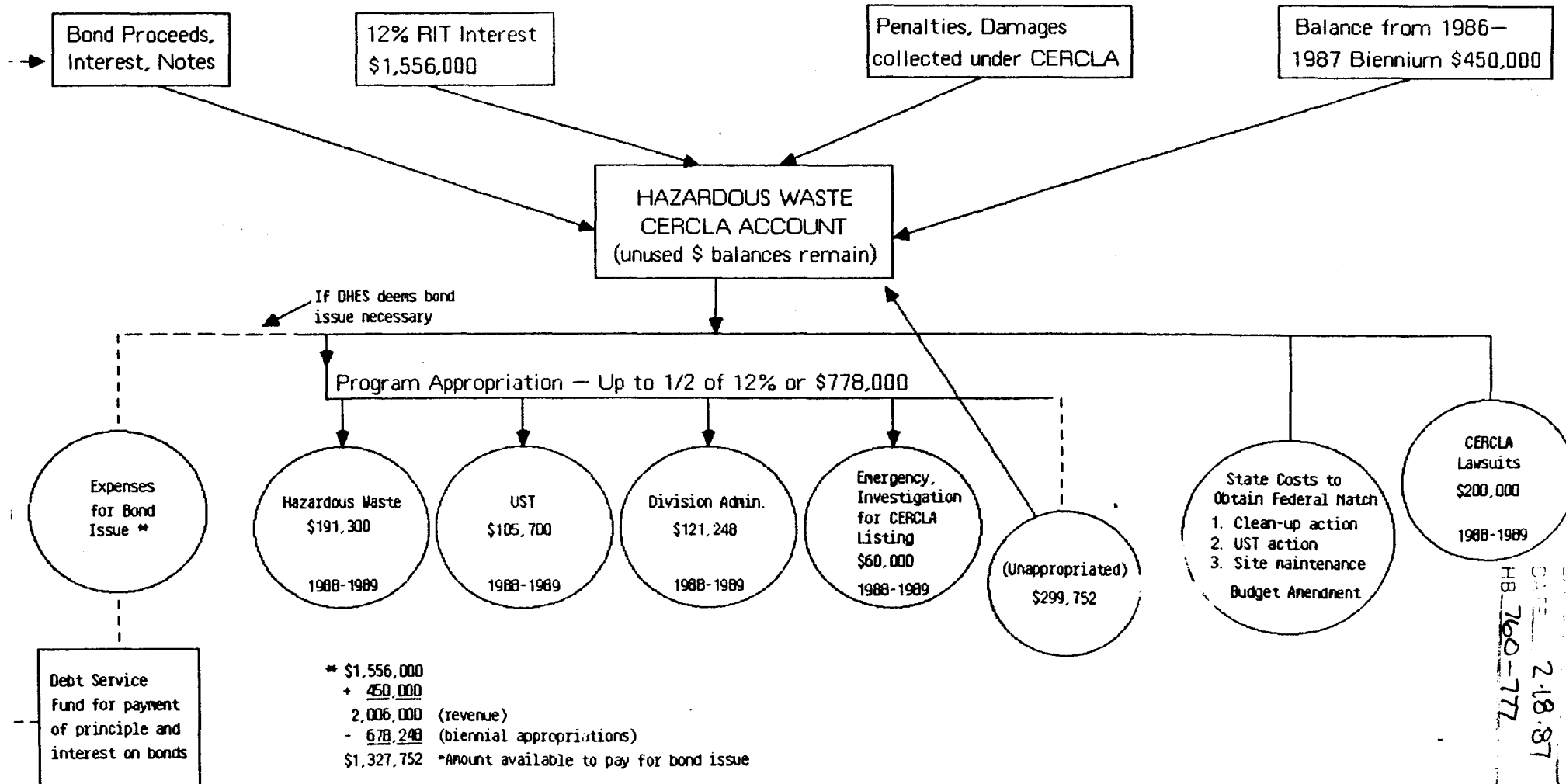
- Successful negotiation/litigation with responsible parties can substantially reduce cost to the state. Therefore, funding set aside for state match may be available for reappropriation by the legislature in the future.
- If fund monies are being used, the assumption of the lead role at a site by the state is virtually the only opportunity for the state to direct activities and for private businesses and professionals in Montana to participate in a site response. EPA maintains standing national contracts which makes it difficult for average Montana firms to be competitive.
- Superfund projects require expertise in a variety of advanced technical and scientific disciplines. Active involvement by the state provides the opportunity for persons or firms with this training to stay or establish themselves in Montana.

HAZARDOUS WASTE/CERCLA (SUPERFUND) BILL

Section 1. Allocation of 12% of RIT Interest Income

Section 2. Creation of Hazardous Waste/CERCLA Special Revenue Account

Revenue Sources



DATE 2-18-87
HB 760-777

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2-18-87
760-777

TESTIMONY ON HB 777 AND HB 760
BY HOWARD JOHNSON
OFFICE OF THE GOVERNOR

Mr. Chairman, members of the Committee, my name is Howard Johnson. I am the Coordinator of the Clark Fork River Basin Project in the Governor's Office and I am here to testify in support of House Bill 777 and House Bill 760.

These bills provide the State of Montana with the matching funds necessary to clean up certain Superfund sites in the Clark Fork River Basin and in other areas of the state that have been contaminated by hazardous waste. The bills dedicate 6 percent of the RIT interest earnings to a special Superfund trust to be used as state match when no responsible party can be found or when the state and EPA deem it necessary to commence clean up before final negotiation with the responsible party can be concluded. An example of such an effort would be the construction, in 1986, of a new water system for 35 residences at Milltown whose drinking water became contaminated with arsenic that came from mineral-related sediment behind Milltown Dam.

In addition, these bills would allow the state to conduct the preparatory work necessary to continue the state's Natural Resource Claims Damage Lawsuit against Anaconda Minerals Company and their parent company, Atlantic Richfield, for environmental and economic damage the state has suffered. It should be pointed out that all damages to the Clark Fork Basin from hazardous waste

2-18-87

760-777

releases won't be remedied by on-going Superfund clean up procedures. Some damages have already occurred; some will last for years and some will be permanent. Furthermore, all state costs from pursuing this lawsuit are recoverable under the Federal Superfund Act. Funds received from the defendants must be placed in a trust fund and it is anticipated that the interest earned from this trust fund will be dedicated to improving the environmental and economic resources damaged or lost due to hazardous waste release.

Since the Clark Fork River Basin Project's inception in 1984, continuous progress has been made to put into place a long term strategy, to correct some of the basin's mineral-related environmental problems. These bills provide the funds and flexibility necessary to move forward in the first phases of cleanup. They represent a prudent state commitment to match the cleanup dollars being expended by both the federal government and industry in the basin.

Both I and the Governor believe that such a use of the RIT fund is exactly what the legislature anticipated when they passed the act.

REF: 8MO

February 18, 1987

TO: Tom Jones, Chairman, House Natural Resources Committee
and Committee Members

FROM: John Wardell, Director, U.S. Environmental Protection Agency (EPA)
Region VIII Montana Office

I respectfully submit the following testimony regarding House Bills 760 and 777. The EPA supports the bills.

Since 1983 the State of Montana and EPA have investigated and corrected contamination problems affecting public health and the environment. Several million Federal dollars have been spent in support of the Superfund Program efforts. Noteworthy efforts included installation of a replacement water supply system for citizens of Milltown, expenditures of approximately \$2.5 million to reduce discharges of wood preservatives to Silver Bow Creek in Butte, and construction of a dyke at Somers to prevent discharges of wood preservatives to Flathead Lake. In 1987, EPA will provide approximately 6 million dollars to continue these efforts at Superfund sites in Montana. Additional millions of dollars will be provided in 1988 - 1992.

The Superfund Program cannot only be a Federally funded effort. House Bills 760 and 777 will insure that there will be a strong State of Montana commitment. The State of Montana commitment is essential for several reasons.

1. The Federal program requires a 10 per cent state match to correct or clean up contamination problems. EPA will pay for 100 per cent of costs associated with investigation and selection and design of the remedy to correct or clean up contamination problems. EPA will, however, only pay for 90 per cent of the costs to implement the remedy. Without the 10 per cent State of Montana share, corrective activities cannot begin. Only in emergency situations will EPA pay for 100 per cent of clean up/corrective action.

-2-

2. At sites with responsible parties, i.e., parties responsible for causing the contamination problem, EPA asks the responsible party to clean up the site. EPA has learned from experience, however, that timely and complete responsible party clean up is most likely to occur when sufficient Federal and state match money is also available to undertake corrective activities or clean up.
3. EPA will be most likely to provide Superfund Program money to the states with strong commitments to implement the Superfund Program. One of the most visible indicators of the state's commitment is funding to provide state match to undertake corrective actions or clean up.
4. The Superfund Program is a significant environmental effort similar to the Clean Air or Safe Drinking Water programs. Montana eagerly assumed responsibility to implement these programs. The State of Montana should also assume a significant role in determining how the Superfund Program is implemented within the State. For the State of Montana to assume a significant role, it needs to commit State resources.

Thank you.

H.B. 777
TESTIMONY OF STAN BRADSHAW
MONTANA STATE COUNCIL OF TROUT UNLIMITED
FEBRUARY 18, 1987

Mr. Chairman and members of the committee, my name is Stan Bradshaw, and I am here on behalf of the Montana State Council of Trout Unlimited. Trout Unlimited has over one thousand members who live in Montana, and is vitally in issues which affect the water quality of the state's rivers and streams.

Trout Unlimited supports H.B. 777 for two reasons. First, it focuses resources on remedial actions. Second, it recognizes the need to support litigation initiated under CERCLA to assure adequate clean-up of hazardous wastes. These two areas of endeavor are at the heart of CERCLA - the recovery of the state's natural resources from the crippling effects of hazardous waste deposition in the state.

The commitment expressed in this bill is especially important in light of ongoing studies of the upper Clark Fork Basin and the hazardous waste problems pervading that basin. I doubt that anyone would seriously argue that the aquatic and terrestrial productivity of the upper Clark Fork has not been seriously impaired by the historic activities which have gone on in that basin. It is only through a commitment such as the one expressed in this bill that we can hope to restore the Clark Fork Basin to its full potential.

Certainly, the Clark Fork is not the only area of the state in need of attention. H.B. 777 holds promise for the recovery of many areas around the state beset by hazardous wastes. The recovery of those areas can only be good for the well being of

EXHIBIT 13
DATE 2-18-87
HB 760-777

the state and its people. H.B.777 enables the state to fully participate in the benefits contemplated by CERCLA.

Because of the tremendous benefits that it represents for the people of Montana, the State Council of Trout Unlimited urges the committee to vote DO PASS on H.B. 777.

NATURAL RESOURCES COMMITTEE

DATE Feb. 18, 1987

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources COMMITTEE

BILL NO. 775; HJR 30

DATE Feb. 18, 1987

SPONSOR Spaeth LORY

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

NATURAL RESOURCES COMMITTEE

BILL NO. 746

DATE Feb. 18, 1987

SPONSOR Brandewie

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

National Resources COMMITTEE

DATE Feb. 18, 1987

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources COMMITTEEBILL NO. 770DATE Feb. 18, 1987SPONSOR Meyers

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Dan Hoven	Holswa, MT	✓	
John Plunk	(Hill)	✓	
John Tachia	Helena	✓	
Thomas E. Rott	Charls	✓	
Tom Blum	Bozoz	✓	
Boggy Ditt	St. Ignatius	✓	
Fitz Wipplinger	Dixon	✓	
Frederick Whittier	Belling		✓
Ed Skinnick	Boz		
Ed Skinnick	Boz		
Chris Tweeten	Helena		
CLAY SMITH	AG's Office		X
Wen Wecker	Confederated Salish & Kootenai Tribes		X
Michael T. Pabst	"		X
Mark Echert	Glasgow	✓	
Laurence Kamnitz	Alma MT		X
Robert Dill	Belling		✓
James Musgrove	FT. Belknap Tribes		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Natural Resources

COMMITTEE

BILL NO. 770

DATE Feb 18 1987

SPONSOR Meyers

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 23, 1987

The meeting of the Senate Natural Resources Committee was called to order by Chairman Thomas Keating on March 23, 1987, at 12:30 p.m. in Room 405 of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE SESSION:

DISPOSITION OF HOUSE JOINT RESOLUTION 6: Senator Keating reminded the committee that HJR was sponsored by Rep. Schye and it was a request that the U.S. Environmental Protection Agency (EPA) revise its policy concerning underground salt water injection into the Judith River formation on the Fort Peck Reservation. There is a jurisdictional dispute as the Sioux-Assinaboine Tribe does not recognize the Board of Oil and Gas Commission for permitting purposes on any lands within the Reservation. The Oil and Gas Commission is informing the operators that they have to file with the State if they are private operators, and they have to file with the Tribe as well. The salt water disposal is not operated by anyone. The Judith River is a source of freshwater for drinking, and HJR 6 is necessary to establish policy and regulation so that there will be governance on the salt water injection program. Sen. Keating informed the committee that the State is seeking legislation for governance on salt water disposal in the State rather than EPA because the federal government is so slow and the Oil and Gas Commission has the expertise for making the judgement on salt water disposal. That program would be more efficient and faster with local control. Because the Board of Oil and Gas has no authority on reservations, Sen. Keating said that HJR 6 should be passed.

Sen. Yellowtail said the tribes are frustrated as well and have also petitioned the EPA.

Sen. Tveit moved that HJR 6 BE CONCURRED IN. Motion CARRIED unanimously.

DISPOSITION OF HOUSE JOINT RESOLUTION 24: HJR 24 would allow extension of the Western States Forestry Task Force at a cost of \$7,000. Sen. Severson moved that HJR 24 BE CONCURRED IN. Motion CARRIED by majority vote. Sen. Halligan voted "no."

DISPOSITION OF HOUSE BILL 718: Sen. Keating explained that HB 718 would reallocate environmental contingency account to the Environmental Quality Protection Fund for hazardous waste, etc. Gail Kuntz passed out an explanation sheet that was prepared by Hugh Zackheim at the request of the sponsor, Rep. Harper. (Exhibit 1)

George Ochenski, EIC, explained that HB 718 would provide a new earmarking of the RIT interest.

Sen. Lynch moved the amendments that were presented to the committee by Rep. Harper on March 20. Motion CARRIED unanimously.

Sen. Halligan moved that HB 718 AS AMENDED BE CONCURRED IN. Motion CARRIED unanimously.

CONSIDERATION OF HOUSE BILL 777: Rep. Ream, House District 54, introduced HB 777 as being a companion bill to HB 760. He said that HB 777 was a bill that would address the Superfund program, which allows for investigation and if need be, cleanup of substances that have been allowed to escape into the environment. Rep. Ream said that those responsible for the problem should help pay for the cleanup. He also stated that HB 777 does change the RIT interest income from 6% to 12% which was part of the Governor's package. It also establishes the Hazardous Waste/CERCLA Account. EPA provides 90% of the funding for remedial action sites and the State provides 10%. Rep. Ream asked a representative from DHES to explain more fully HB 777.

PROPOSERS: Katherine Orr, Attorney for DHES, distributed detailed handouts to the committee. Ms. Orr stated that HB 777 would put in place a funding mechanism for the hazardous waste program. HB 777 also allows for bonds to be sold if DHES deems it necessary. (Exhibit 2)

Stan Bradshaw, Trout Unlimited, supported HB 777.

Vic Anderson, Department of Health and Environmental Sciences, testified that HB 777 would provide the basis for the State to deal from a position of strength.

Don Engles, Montana Chamber of Commerce, entered support of HB 777.

George Ochenski, EIC, stated full support of HB 777 because without the bill, cleanups cannot be accomplished.

John Wardell, EPA, presented written testimony (Exhibit 3); and he verbally stated support.

Jim Flynn, Department of Fish, Wildlife and Parks, submitted written testimony (Exhibit 4) and supported HB 777. Mr. Flynn noted the \$200,000 for damage suits. He also reported that DFWP had committed a project manager and 1/2 time staff attorney to the effort.

OPPONENTS: There were no opponents present.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: Sen. Stimatz wanted to know the purpose for the \$200,000 that was designated in the bill and an explanation of why it was in the bill. It was explained that the money will go to develop technical data for the lawsuit that began in 1983 in Billings District Court. A stay was entered into by virtue of a settlement between the potentially responsible party and the State to stay all further action until RIFS (Remedial Investigation Feasibility Study) is completed. Based on that study, determinations will be made as to which portions of the areas are irrevocably lost. That is the basis for the damage claim according to Attorney Orr.

Mr. Wardell responded to a question and said that emergency situations referred to on page 5 of the bill are those emergencies that are immediate environmental concerns; such as, oil spills.

Mr. Anderson, Department of Health, said that the department is potentially duplicating EPA emergency response, but he hoped instead to complement it. If an emergency is too small of an accident, EPA would not act.

Sen. Keating explained that in other areas of State Government the State bills the federal government on that basis and he asked Mr. Wardell if EPA would respond in like manner if the State should react to an emergency. Mr. Wardell said probably not.

Sen. Keating wondered that since interest income is \$13 million a year, why is there a need for a bonding mechanism since there is so much money from the corpus, and Rep. Ream answered that it may not have to be used, but a Butte site itself may cost \$4 million to \$5 million.

There was much talk about lawsuits in Silver Bow County, some of which were different issues than natural resource damage suits. It was stated that Natural Resource Damage Claims are intended to pick up from where the cleanup action left off to recover for permanent loss of resources that will never be able to be replaced.

Sen. Halligan then suggested that George Ochenski and Gail Kuntz develop a flow chart that would "pull together" HBs 777, 718, and 373 so that the committee could get a better understanding of where hazardous waste money will be spent.

Mr. Ochenski said the request would be honored. For clarification, Mr. Ochenski said the Anaconda Company had paid for remedial investigation. There is a step by step approach to figure out what the problem is, where it originated and what is the most cost-effective way to clean up. He reiterated that Superfund is a slow process-- a step-by-step fund.

Sen. Keating said that there seems to be a two-fold purpose in HB 777: 1) Establishing a State match for Superfund money to clean up certain hazardous waste sites around the State where the responsible party cannot be found; and 2) Authorizing the Department of Health to locate known operators. Sen. Keating wondered to what extent would the State extend its arm.

Mr. Opitz explained that HB 777 would give the State the authority to go to the responsible party and have them start cleaning up. If they don't then the \$200,000 is available for the State to proceed with cleanup and then sue for treble damages under the Superfund.

CLOSING: Rep. Ream elected to close on HB 777 when he closed on HB 760.

CONSIDERATION OF HOUSE BILL 760: Rep. Ream introduced HB 760 as an act that would authorize the issuance and sale of CERCLA General Obligation Bonds and appropriating the proceeds to the Hazardous Waste/CERCLA Special Revenue Account.

PROPOSERS: George Ochenski, EIC, stated that HBs 760 and 777 were companion bills and EIC supported both of them.

Katherine Orr testified that HB 760 would give authority to the Board of Examiners to issue bonds, and she supported the bill.

OPPOSERS: There were no opponents present.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: In answer to Sen. Halligan's questions, it was stated that the bonds are General Obligation Bonds with the general fund to back them up. Marvin Eikels from the Department of Administration explained that the General Fund and RIT both back the bonds.

CLOSING: Rep. Ream said that the bonds would be used for CERCLA cleanup. HB 760 would be an enabling bill to the State. One of the reasons for the bonding bill was because no general bonding existed for the State. The Superfund program that has been in existence in the State had gone a long ways in getting started in cleanup areas. The State has identified another 135 sites. Rep. Ream said that the Superfund was reauthorized in Congress last October for another 5 years. The next 5 years will be an opportunity for the State to become involved in a major cleanup effort and do so with the major portion coming from the federal government. Rep. Ream said the State does "mean business and is serious in cleaning up sites." If HB 760 is passed, Sen. Halligan said he would carry it on the floor.

CONSIDERATION OF HOUSE BILL 629: Rep. Bob Ream , House District 54, introduced HB 629 as a bill that would address problems the State has had in administering metal mine reclamation. Rep. Ream stated that he was carrying the bill at the request of the Department of State Lands, and he gave Dennis Hemmer credit for identifying problems in existing law and in administering the law.

PROPOSERS: Dennis Hemmer, Department of State Lands, stated that HB 629 was drafted in order to provide more practical regulation for mining operations. HB 629 would require that any operator who uses a mineral processing reagent to acquire an operating permit; and the requirement of a reclamation bond would insure that the operation would be reclaimed in an environmentally acceptable manner. Mr. Hemmer explained that miners would be exempt from procuring an exploration license for very small disturbances however. HB 629 denies "Small Miner Exclusions" to operators who propose the exclusion within the boundaries of an operating permit or propose to use certain processing reagents that pose a high potential for environmental harm. (Exhibit 5)

George Ochenski, Montana Environmental Information Center, stood in support of HB 629.

Gary Langley, Executive Director of Montana Mining Association, said that the bill would do two things: 1) Small operator will not be allowed to use cyanide and 2) Exploration permit would not be required to merely do assessment work. If HB 629 is amended to place more restrictions on the small miner, however, Montana Mining Association would oppose the bill.

John Fitzpatrick, Montana Tunnels, testified that Montana Tunnels is the largest user of cyanide and will even be a bigger user in the future. Mr. Fitzpatrick said he realized it can be a problem and that cyanide should be handled responsibly.

Dave Conklin, Helena, spoke in support of HB 629 with one exception. Mr. Conklin said he lives in a mineralized area where small miners and mining corporations have active prospects and mines. Mr. Conklin stated that he is concerned about decreasing residential property values if HB 629 is passed as is. Lines 3-9 on page 5 that state that a small miner will be able to obtain an operating permit for a larger operation without jeopardizing his "exempt" operation on any number of smaller mines especially concern him. Mr. Conklin said that the residential property owners deserve reclamation, and he submitted an amendment. (Exhibit 6)

Tom Stephens, landowner in Grizzley Gulch, stated that he has a small pond in his backyard that is fed by several local springs as well as a stream that flows down the Gulch toward town. Mr. Stephens' residence is located downstream from a mining operation conducted by a "small miner." According to Mr. Stephens, the stream has been manipulated beyond recognition. Several times the "small miner's" holding ponds have breached which caused substantial erosion. Mr. Stephen said that small miners are not supposed to contaminate water, but they do, and residential property value is adversely affected. Mr. Stephens favors HB 629 only if it is amended as Mr. Conklin suggested. (Exhibit 7)

Tim Baker, Grizzley Gulch, Helena, presented an amendment to HB 629 (identical to Mr. Conklin's). Mr. Baker testified that the "small miner" exemption was a compromise in the 1971 legislature and that the "small miner" benefits in that he is free from financially burdensome regulation. In return, the "small miner" must remain small or meet the reclamation requirements which protect nearby landowners as well as citizens of Montana. Mr. Baker said that he and his family have borne the burden of the exemption granted to the "small miner." For example, heavy equipment damages the road and is operated at early hours on weekends and holidays. Mr. Baker said there is an aesthetic loss as well as the loss in property values, and he asked the committee to seriously consider his amendment. He concluded his testimony by inviting any and all to view the "small miner's" operation four miles south of Helena. (Exhibit 8)

Steve Pilcher, Water Quality Bureau, Department of Health, stated that the Water Quality Bureau tries to stay out of mining laws; however, the problems of cyanide had taken an increasing amount of Bureau's time and he supported HB 629 because anyone who uses cyanide should come under the Department of State Land's controls.

OPPONENTS: Russ Dugdale, owner and operator of Metallurgical Services, Incorporated, and a 1956 graduate from the School of Mines said that his livelihood depends on small miners and HB 629 would eliminate the small miners. Size of the bonds that must be posted prior to operation as well as the requirement of an operating permit resemble an Environmental Impact Statement, and Mr. Dugdale said that would cost time and money. Mr. Dugdale stated that HB 629 addresses all reagents and a small miner would not be allowed to even use soap and water in his panning operation without having an operating permit under this bill. Mr. Dugdale purported that HB 629 would reduce the small miner to the hobby status. Initially, a small miner employs from four to ten people with that number growing to thirty when the mine is in full production. Mr. Dugdale emphatically stated that purchasing an operating permit estimated at \$50,000 would make it impossible to fund a small mine. (Exhibit 9) Mr. Dugdale presented amendments to require safety training to avoid bonds and permits. (Exhibit 10)

Ed Batterman, Butte, told the committee, "Don't kill the goose that lays the golden egg." Mr. Batterman earns his living by drilling and exploring for small "outfits" and he said that HB 629 would discourage exploration and undermine his business. (Exhibit 11)

Dennis Markovich, who represented a small mining firm, stated that if HB 629 is passed, it would put the firm out of business. He presented the committee with cost accounting figures to support his testimony. (Exhibit 12)

Koeler Stout, consultant in the mineral business, said that the Southwest Montana Mining Association lobbied long and hard for the small miner exclusion in 1971 for the reason that the ordinary small miner could not afford bonding requirements of the bill. Mr. Stout said the same is as true in 1987 as it was in 1971. Mr. Stout stated that HB 629 would greatly restrict the small miner and would practically do away with the small miner exclusion. Definition changes were proposed by Mr. Stout. (Exhibit 13)

Wayne Fletcher, professional chemist and Vice President of the Lewis and Clark Chapter of the Montana Mining Association, stated that HB 629 would find almost universal support in the mining community if amendments were incorporated to do the following:

1. Remove potentially enormous bonding requirements.
2. Remove the unnecessary restrictions on prospecting.
3. Address only the use of cyanide and other hazardous chemicals. (Exhibit 14)

Ian Hendrickson, Mining Consultant in Helena, said that HB 629 essentially "wipes out the small miner." Under this bill, a permit would be needed to use any chemical reagent. Mr. Hendrickson stated that Idaho is considering cyanide legislation with which he concurred. Taking exception to the definition of "abandonment," Mr. Hendrickson stated that as economic changes occur, there would be unnecessary loss of potential mines and cited Montana Tumels, Butte's East Pit, and the mine at Winston as examples. (Exhibit 15)

OPPONENTS: There were no opponents present.

Senator Keating announced that most of the "proponents" in his judgement as Chairman, were in actuality "opponents" because they had amendments to the bill. Also, he said executive action would not be taken on March 23, but he advised the people who had testified to place their addresses as well as their names on the visitor's roster so that committee members could be in touch with them. Also, Sen. Keating announced that there may be a possibility of a subcommittee's being appointed since there were so many people and issues involved in HB 629.

CONSIDERATION OF HOUSE BILL 642: Rep. Spaeth, House District 84, emphasized that HB 642 deals only with general revisions in water appropriation process and not with adjudication. He said that HB 642 would revise the permit and utilization provisions of the water use laws; altering the filing and issuance requirements of a certificate of water right. He said that wells that have less than 100 gallons per minute were exempt from the permitting process; but he understood that Mr. Doney was going to present an amendment to the effect that more than one well from the same source that brings 100 gallons a minute or more should also go through the permitting process. Also, the bill pertains to water reservations in the Missouri River below Fort Peck Dam that must be filed no later than July 1 1991. The controversial part of the bill is listed on the bottom of page 14 which gives the DNRC discretionary authority.

Gary Fritz, DNRC, commented on the "controversial" part of the bill. He said that existing laws make existing users subordinate to reservations adopted between July 1, 1985, and 1991. The section would allow the Board of Natural Resources to decide reservations on a stream by stream basis. The interim permits mean that users can go on as before if they don't interfere with the reservations. Mr. Fritz gave an example of a water user with reserving permit after July 1985--Romaine Cattle Company, 30 gallons per minute for stockwater purposes out of the Marias River. Mr. Fritz stated this water user would be "junior" to all reservations adopted by the Board in 1991. DNRC suggested that the Board be given the discretion to decide what uses would be more important and would take priority (whether the reservation comes first or the permitting comes first). DNRC would now have the discretionary authority under HB 642 on a case by case basis.

Gary Fritz mentioned the new section 10 that would have been a repealer for an applicant applying for 3,000 acres of water, but the House had struck that section, and applicants must go to the legislature when wanting to apply for 3,000 acres or more.

Ted Doney, an attorney who specializes in water law represented the Water Development Association. He said that he supported the bill in general with two exceptions.

1. Amendment from the house, page 2, would create a legal problem. Mr. Doney presented an amendment to state that two wells that total 100 gallons or more would originate from the same source." (Exhibit 16)

2. Mr. Doney disliked the word "combined" because he didn't know what the word meant in the bill. He thought it meant that two wells that were irrigating the same tract but not physically connected. Mr. Doney would rather the bill would read "wells from the same source."

He also mentioned that if an irrigator has a priority date after July 1, 1985, he would have to object to all the Missouri River reservations and get DNRC to "subordinate" reservation to his permit. Mr. Doney stated that he felt most of the farmers and ranchers would not know the procedure. He said that he had talked to Mr. McIntyre who explained "subordinate" in the bill to mean that permits of farmers and ranchers would have the preference of use over the water reservations. Mr. Doney said "subordinate" has not been used in water law. However, he said he supported HB 642 if the bill were passed with his proposed amendment adopted.

Jim Flynn, Department of Fish, Wildlife and Parks, supported HB 642, but stated a concern with one portion of the bill on page 14, lines 20-25, which sets up two priority dates. A reservation allocates water availability to users and non-users. Mr. Flynn stated that the cumulative effect of many permits could interfere with reservations, then DNRC will have to sort out who gets the priority. He said that HB 642 sets up dual permitting, and recommended returning to the original language of the bill on page 14.

Don Jenni from Lewistown explained that he had written a letter to the committee expressing his opposition to the House's reinstating the repealer in section 21. He said that if 85-2-317, MAC, is not going to be repealed, then a change should be made increasing 3,000 acre feet of water to 4,000 acre feet of water in order to make the section consistent with other provisions of State law. Also, Mr. Jenni suggested that 85-2-317 (3) have the addition of "hydropower."

Stan Bradshaw, Trout Unlimited, agreed with Mr. Flynn's proposal of returning to original language on page 14.

OPPONENTS: There were no opponents.

Sen. Keating noted that although proponents supported the bill, they all had exceptions and opposed some section.

CLOSING: Rep. Spaeth said that he liked and supported Mr. Doney's amendment. Rep. Spaeth addressed the issue on page 14. The water reservation in the statute will not affect any permits, etc., prior to 1985. Rep. Spaeth stated that EIS on water reservations will deal with cumulative effects and will list all the existing users. If the DNRC is not given discretionary power which is "middle ground" approach, the only option of users would be to object to water reservations. Rep. Spaeth announced that he was committed to the language on page 14.

CONSIDERATION OF HOUSE BILL 661: Representative Spaeth, sponsor of the bill introduced the title: "An Act Further Defining the Term "Project" To Clarify that a Project Does Not Include Maintenance and Repair of Existing Irrigation Facilities. He said that the bill dealt with 310 Permits. The bill is very important to irrigation counties. Rep. Spaeth said the reason the bill was written was because for the first time since the 1975 bill, Natural Streambed and Land Preservation Act, it was interpreted by the Attorney General that historical usage had not been grandfathered out of the 1975 act.

As summer progresses, operations almost change weekly in putting in diversions, etc. Therefore, any ditch company who does any work in a stream would have to get a permit. There is a one-time emergency type of exemption. Rep. Spaeth said that in order to get a permit, a team of supervisors would have to go out and inspect the stream. HB 661 would re-establish the historical "grandfather" for the ditch companies and irrigators. Rep. Spaeth asked that the committee pass HB 661.

PROPONENTS: Ray Beck, Conservation Districts, DNRC, supported the bill. He said that the bill would cover the concerns and would preserve the "status quo."

Debbie Bremer, Montana Association of Conservation Districts, asked committee's concurrence of HB 661.

Jim Flynn, Department of Fish, Wildlife and Parks, supported HB 661 and submitted written testimony. (Exhibit 18)

Stan Brandshaw verbalized support of HB 661.

Jess Malone, Choteau, supported HB 661 and he said that farmers need the right to be able to do maintenance work in the areas of their diversions without undue limitations caused by the 310 permit system. In fact, Mr. Simon said his crops would depend on that. Water diversions have to be maintained and the job has to be timely because crops are dependent on opportune irrigation. Because of the time framework built into application for the permit, permits cannot be approved for three weeks. Therefore, Mr. Simon wholeheartedly supported HB 661. (Exhibit 19)

OPPONENTS: Ted Doney, Montana Water Development Association, said that he liked the bill as it was introduced in the House, but not as it was amended. He stated that an irrigator now has to either submit an annual plan or go to the district board and receive approval. Mr. Doney explained that there is no structure in a stream. Every spring farmers and ranchers are in a stream replacing boulders or logs. He said that it is too burdensome to the irrigator to project an annual plan or to gain approval every time maintenance work has to be done in a stream. Mr. Doney mentioned that he had drawn up some amendments that would be a reasonable compromise, but since it would entail rulemaking, he had reconsidered and did not submit them to the committee. However, Mr. Doney emphatically stated that he would prefer that HB 661 go back to the original language.

QUESTIONS (AND/OR DISCUSSION) FROM THE COMMITTEE: In response to a question by Sen. Halligan, Mr. Doney said that according to the amended bill, replacing logs or boulders that would divert the stream would require advance approval of the supervisors. Mr. Beck said that somebody has to make a decision on an alteration.

It was mentioned that supervisors have legal responsibility to oversee activities in a spring.

It was determined that HB 661 language tries to preserve the status quo--irrigator gets one-time authority from the district to conduct an annual operation. Once authority is received from the district (unless there are dramatic changes) the irrigator would not have to go back to the district. Most irrigators know what they are going to have on an annual basis.

CLOSING: Rep. Spaeth stated that there is a definite need for HB 661. At the present time, "everything out there requires a permit. We are trying to get it back in the middle."

There being no more business before the committee, Sen. Keating adjourned the meeting at 3:10 p.m.


THOMAS F. KEATING, Chairman

nm

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	✓		
Sen. Cecil Weeding, Vice Chairman	✓		
Sen. John Anderson	✓		
Sen. Mike Halligan	✓		
Sen. Delwyn Gage	✓		
Sen. Lawrence Stimatz	✓		
Sen. Larry Tveit	✓		
Sen. "J.D." Lynch	✓		
Sen. Sam Hofman	✓		
Sen. William Yellowtail	✓		
Sen. Elmer Severson	✓		
Sen. Mike Walker	✓		

Each day attach to minutes.

COMMITTEE ON

DATE

March 23, 1987

HB 629 Natural Resources

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Jesse Malone Jr	Elmore Co-operative Canal	661	*	
Don Jenni	Don Jenni	642	*	
Kochler Stou L	Kochler Stou L	629		X
Russell M Dugdale	1727 "A" St Butte Mt Metallurgical Services Inc	629		X
WAYNE FLETCHER	L & C CHAPTER	629		X
Dennis McPherson	USMI Inc	629		X
H. Baithmann	Butte Mont Baithmann Drilling	629		
Tim Baker	Self	629	X	
Tom Stephens	Self	629	T	
Dave Corbin	SELF	629	X	
Jo Lohr	Self L&C Chapter MMA	629	as amended	
Joe Condrick	Self 707 Deethorn Ave Kelen, 59601	629	as amended only	
John W. Hansen	Self	629		X
MARY Conclid	Self	629	X	
Cary Felt	DNRC	642	X	
Larry Felt	DNRC	642	X	
Vic Anderson	DHE S	760 777	X	
Mark A. Smith	Self	629	X	
Dennis Hennen	Dept of State Lands	629	X	
Mary A Langan	Mt. Mining Assn	629	X	
Debi Drumm	MT Animal Conservation Dist	661	X	
Ken Wilkins	Interch/Western Energy	629	X	
John A. Fitch	Payson Gold Corp	629	X	
Don Ansel	Mt. Chamber of Commerce	760 777	X	
Frank M. Smith	MT Sierra Club MT House of Representatives	760 777	X	
GEORGE OCHSOSKI	MT ENV. INF. CTR	760 777 629		
STEVE PITCHER	DHE S Water Quality Bur	629	X	

DATE March 23, 1987

COMMITTEE ON HR 642 Natural Resources

VISITORS' REGISTER

[illegible]

HOUSE BILL 718

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 3-23-87
BILL NO. HB 718

Purpose:

To establish an ongoing program to cleanup hazardous waste sites in Montana.

Need:

There are approximately 100 hazardous waste sites in Montana that will not qualify for the federal Superfund program. These sites will only be cleaned up if the state takes the initiative.

Legal Framework:

HB 766, enacted in 1985, authorizes the health department to take remedial action whenever a release of a hazardous substance threatens public health or the environment. The law established a revolving fund (the Environmental Quality Protection Fund or "mini-Superfund") that DHES can use to respond to releases or cleanup waste sites if responsible parties fail to act; responsible parties are then liable to reimburse the fund for costs and damages. HOWEVER, THE LEGISLATURE DID NOT APPROPRIATE ANY MONEY TO THIS FUND, SO DHES HAS NOT SET UP THE NECESSARY PROGRAM TO ADDRESS HAZARDOUS WASTE SITES. HB 718 would provide the necessary allocation to get such a program going.

Relation to RIT Use:

HB 718, with the proposed amendments, does not affect RIT allocations for the 1988-89 biennium. The 4% allocation under HB 718 will not begin until FY90, just like the allocations provided for in SB 373.

HB 718 is highly consistent with the use of the RIT to address the impacts of mineral development. As indicated on the list of state sites, the majority of hazardous waste are mineral related.

Initiation of HB 718 Program:

Through an agreement with the Schwinden Administration, the health department will use \$60,000 from its hazardous waste budget and about \$40,000 from an RIT project grant (dealing with abandoned refineries) to hire a program manager to begin to address Montana's hazardous waste sites. During the upcoming biennium, the program manager will coordinate DHES work on the refinery cleanups and the Apex mill cleanup; prioritize other sites for future action; and identify, contact and work with potentially responsible parties to have these parties begin necessary studies and remedial action at hazardous waste sites. As a result of this work, DHES will be in an excellent position to come before the 1989 Legislature with a program of how it proposes to spend the newly allocated 4% of the RIT interest.

(Note: The 4% allocation to DHES under HB 718 is not a statutory appropriation, as was indicated at the hearing.)

Earmarking:

HB 718 does provide a new earmarking of the RIT interest. The Schwinden Administration has stated its opposition to additional earmarking (although the administration has proposed the additional 6% allocation for Superfund participation in HB 777 and has not proposed to remove the existing earmarking for the water development program).

The earmarking provided for in HB 718 is necessary to provide a predictable funding source (about one-half million dollars per biennium) so the state can address hazardous waste sites in a programmatic way. Without this predictable source of funds, it would be extremely difficult to have the continuity needed for ongoing cleanup projects or negotiations with responsible parties. Also, the predictable fund source is crucial so that responsible parties will know that the state can take action. This provides a great incentive for responsible parties to undertake cleanup -- if they do not, the state will conduct the cleanup and the responsible parties are liable for double damages. This approach is exactly the theory behind the federal Superfund program. Without earmarking, the program suffers from a lack of continuity and responsible parties might delay cleanup action and hope that the next Legislature will not find funds for DHES to pursue work at a site.

Options:

If the committee opposes the new 4% earmarking in HB 718, there are two options that should be considered before killing HB 718.

(1) The committee could increase the existing earmarking for the hazardous waste management program, and include the state waste site program within this fund. The current allocation is 6%, and with HB 777 this will jump to 12%. Coordinating HB 718 with this format would be possible, resulting in a total hazardous waste allocation of 16%.

(2) The committee could approve the program elements of HB 718 without the earmarking. This would at least put in place a statutory program to address hazardous waste sites by using the substantial authority provided for through HB 766 in 1985. The Administration has committed to pursuing this program, and specific projects could be funded through future RIT grants.

Summary:

Approval of HB 718 with the proposed amendments would put Montana in a position to develop and undertake a long-term program that will result in the cleanup of abandoned hazardous waste sites across the state, allow the state to recover costs from responsible parties, and put people to work in this effort.

SENATE NATURAL RESOURCES

EXHIBIT NO. 1 p. 3

RIT ALLOCATIONS

DATE 3-23-87BILL NO. HB 718

<u>PROGRAM</u>	<u>CURRENT LAW</u>	<u>SB 373</u>	<u>SB 373 & HB 777</u>	<u>SB 373, HB 777 & HB 718</u>
Water Development Program	30%	30%	30%	30%
Hazardous Waste Mgmt. (RCRA, UST, CERCLA) ¹	6%	6%	12%	12%
Unspecified	64%	-	-	-
Reclamation and Development Grants	-	56%*	50%*	46%*
Renewable Resource Development Program	- ²	8%*	8%*	8%*
Hazardous Waste Site Remedial Action Prgm.	-	-	-	4%*
Gov.'s Environmental Contingency Account (off-the-top alloc.)	5%	\$175,000	\$175,000	\$175,000 ³

NOTES:

* These allocations will begin in FY 90.

1. RCRA, UST, CERCLA -- These are the major on-going programs of the Solid and Hazardous Waste Management Bureau of DHES. RCRA is the hazardous waste management program; UST is the underground storage tank program; and CERCLA is state participation with the federal Superfund program. None of these programs addresses the "non-federal" (non-Superfund) abandoned hazardous waste sites that are covered by HB 718.

2. The Renewable Resource Development Program is now funded by an allocation from the coal tax, and receives no RIT funds. SB 373 would add an 8% allocation of RIT interest funds to this program.

3. With the amendments proposed by Rep. Harper, HB 718 no longer addresses the emergency account issue. As a result, the allocations in SB 373 would apply.

Overview of Funding and Bonding Bills for RCRA (Hazardous Wastes) and CERCLA (Superfund) Activities

- ° HB-777 provides for use of RIT interest income to pay for Montana's portion of RCRA enforcement activities and CERCLA or Superfund clean-up and litigation costs.
- ° Almost all of the money here serves as a leverage for substantial federal contributions toward preservation of state natural resources.
- ° Up to 6% of the RIT interest income is allocated for RCRA program activities in a state-federal match ratio of 1 to 3 (1 state dollar to every 3 federal dollars).
- ° An additional 6% is allocated for any costs which the state may have to incur for clean-up of one or all of the 7 Superfund sites if the responsible parties or PRP's refuse to pay for these costs themselves.
- ° The way this works is that if the PRP walks away, the state has a choice about providing money as a match to federal dollars in a ratio of 1 to 9 (10% state to 90% federal money). If PRP's take no responsibility for clean-up, the state's match obligation could amount to \$6 million in the next biennium.
- ° It is important that the state act aggressively to leverage for scarce Superfund dollars.
- ° Also, the state has a limited period in which to participate in the clean-up which is anticipated to occur in the next five years.
- ° The bonding mechanism in the bill is advantageous because it would raise the necessary state match without raiding the general fund.
- ° The use of the RIT money as designated in the bill is consistent with the purpose of the RIT fund, which is to protect Montana's resources affected by the extraction of mineral and other non-renewable resources.
- ° Without the bill there would be no hazardous waste management program, and potentially Montana's dump sites would never be cleaned up.
- ° House Bill 760 is a technical bill which provides the authority to the Board of Examiners to issue bonds.

Funding for CERCLA Lawsuits

- ° State has filed an ongoing lawsuit for recovery of loss of natural resources in the upper Clark Fork Basin -- one of Montana's most precious natural resources.
- ° The potential for recovery in this geographical area and other areas is enormous and therefore warrants the full-time dedication of legal and technical staff for evaluation and pursuit of these claims.
- ° Time is of the essence here because of the need to protect the State's interests in the ongoing lawsuit, for instance for evaluation of settlement offers which have already been made, and because there is a statutory deadline beginning in 1989 for filing natural resource claims.
- ° The appropriation is essentially a loan because it is all recoverable for the defendants.
- ° Any future damages collected are by statute put into a trust fund to manage or to help restore natural resources. The trust fund could become a tremendous development asset for several depressed areas in the state.
- ° The funding is an especially appropriate use of the RIT fund.
- ° The \$200,000 is for 2 full-time technical and legal staff, contracted services, support services, and office overhead, to be housed at the Department of Health and Environmental Sciences.
- ° The money is intended for preliminary work necessary for evaluating the size and availability of claims in the state; it is not sufficient for litigation costs.
- ° Anticipated technical activities of the staff are: assess impact of Department of Interior regulations and the new Superfund amendments; integrate existing data with damage assessment; monitor nationwide developments in the law; develop evidence; continue in settlement negotiations.

Superfund Fact Sheet

Superfund is a federal program to investigate and if need be clean up hazardous substances which have been dumped, spilled, or allowed to escape into the environment. If investigations determine an actual or potential threat to public health or environment, clean up or control is required.

A basic premise of the program is that those responsible for the problem should pay for the clean up. However, a large fund has been established to provide money for clean up at sites where responsible parties no longer exist or are financially unable to pay for clean up. The fund also supports administrative, oversight and investigative requirements; and litigation against responsible parties who refuse to participate. Punitive damages up to three times the total response costs can be assessed by a federal court against non-participating responsible parties.

The Superfund program depends a great deal upon state involvement. The EPA, the federal agency which administers Superfund, can conduct investigations; emergency actions; and even require cleanup of sites with a participating responsible party without active state participation. However no action can be taken at sites where responsible party funding is not available without substantive state involvement.

There are potentially several thousand sites in the country that are eligible for federal funding. Given the typical cost of a site response, the number of sites far exceeds the money available. Aggressive action on the part of a state tends to insure more applicable sites get on the priority list which inturn increases the proportional amount of monies expended on clean up in the state.

SENATE NATURAL RESOURCES

EXHIBIT NO. 2 p. 4

DATE 3/23/87

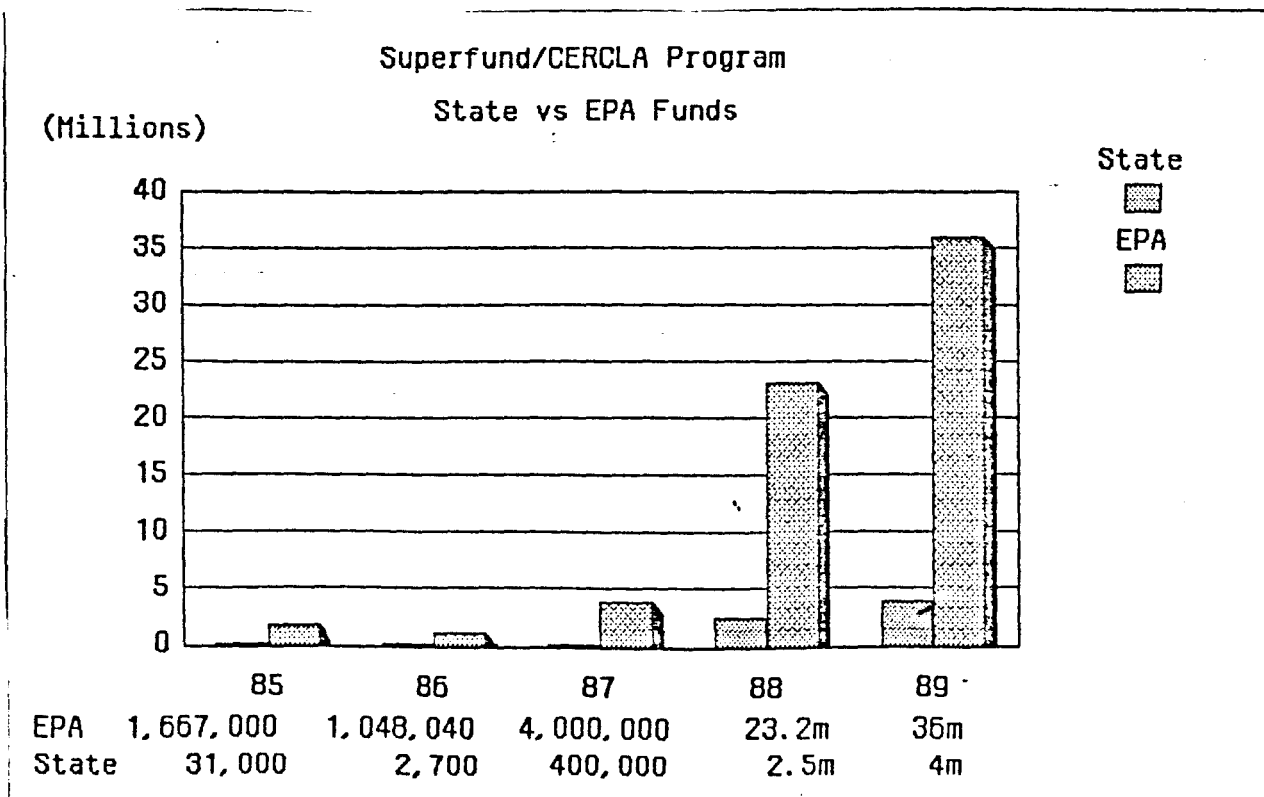
BILL NO. HB 777

2-18-87

Fact Sheet
HB777

- Lateness of this bill because it is a very complicated program, and a lot of time went into the drafting.
- Responsible parties are going to be tabbed for all costs including investigation and clean-ups. Only when no one can be identified will the Superfund itself and the state matching funds be used.
- Clean-ups and investigations are very labor-intensive; involve well drilling, sampling, lab analysis, design of soil cover, dikes construction activities, including heavy equipment operations.
- State must send a clear signal to responsible parties that we're serious about cleaning up sites.
- Next five years are a window of opportunity for Montana to get a large contribution of federal funds to investigate and clean up these sites.
- Superfund was reauthorized by Congress in October, 1986 for another five years. \$8.5 billion was allocated for the program.
- Currently there are nine National Priority List (NPL) sites in Montana. These are:
 - Asarco Smelter, East Helena
 - Anaconda Smelter, Anaconda
 - Idaho Pole, Bozeman
 - Mouat Industries, Columbus
 - Milltown, Missoula
 - Champion Paper, Libby
 - BN Somers Tie Treating Plant, Somers
 - Montana Pole, Bozeman
 - Silver Bow Creek, Butte-Deer Lodge
- To date about 130 additional sites that may pose a contamination problem have been identified in the state. It is likely that some of these sites will prove to be eligible for federal funding.
- Since 1983 it is estimated that over \$10 million has been spent on Montana Superfund activities by the EPA, responsible parties and the state. To date the state's direct financial share has been about \$33,000.

- Several major sites are nearing completion of the investigative phase and the beginning of the corrective action phase. As a result, it is likely that state and federal costs will increase. The following table provides an estimate of these expenses.



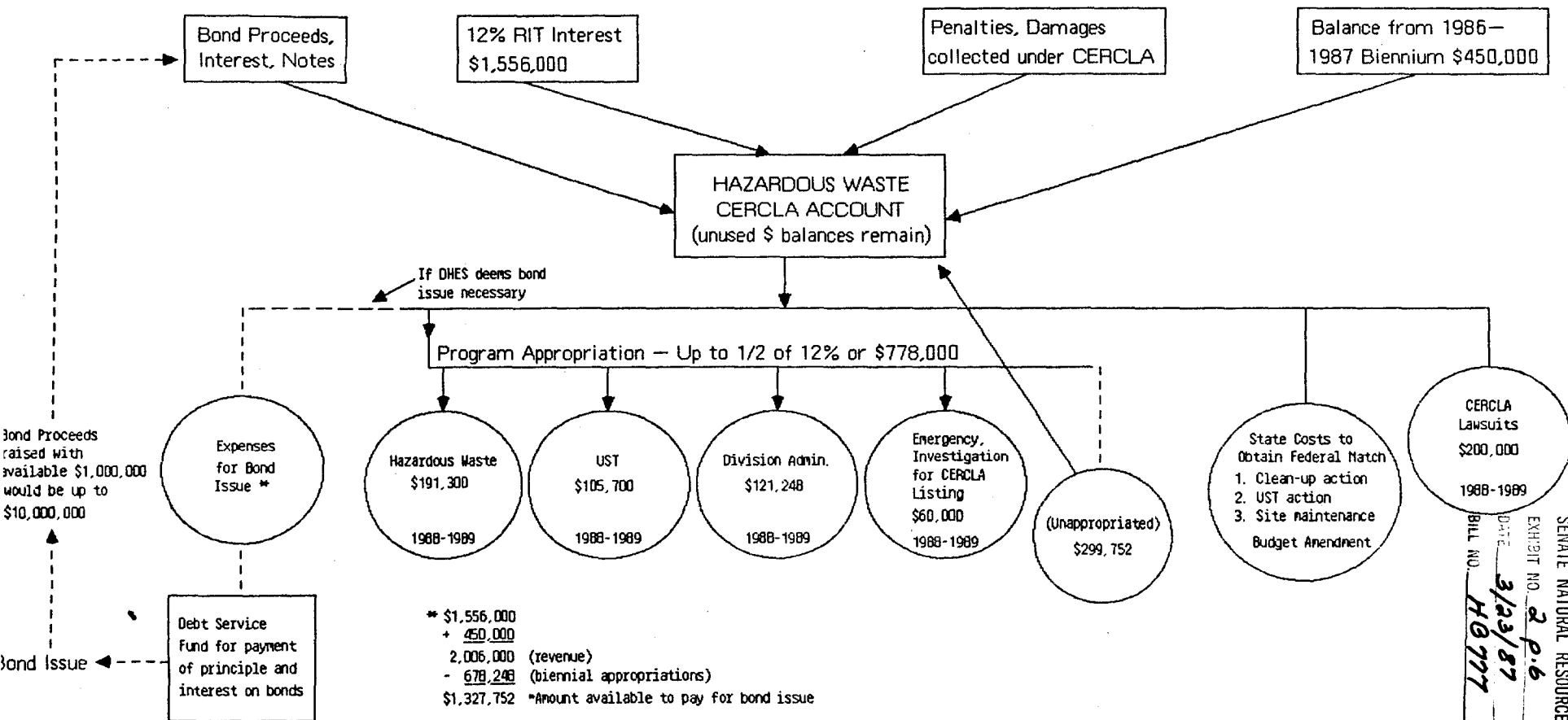
- Successful negotiation/litigation with responsible parties can substantially reduce cost to the state. Therefore, funding set aside for state match may be available for reappropriation by the legislature in the future.
- If fund monies are being used, the assumption of the lead role at a site by the state is virtually the only opportunity for the state to direct activities and for private businesses and professionals in Montana to participate in a site response. EPA maintains standing national contracts which makes it difficult for average Montana firms to be competitive.
- Superfund projects require expertise in a variety of advanced technical and scientific disciplines. Active involvement by the state provides the opportunity for persons or firms with this training to stay or establish themselves in Montana.

HAZARDOUS WASTE/CERCLA (SUPERFUND) BILL

Section 1. Allocation of 12% of RIT Interest Income

Section 2. Creation of Hazardous Waste/CERCLA Special Revenue Account

Revenue Sources





REF: 8MO

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE 3-23-87

BILL NO. HB 777 (HB76)

March 23, 1987

TO: Tom Keating, Chairman, Senate Natural Resources Committee
and Committee Members

FROM: John Wardell, Director, U.S. Environmental Protection Agency (EPA)
Region VIII Montana Office

I respectfully submit the following testimony regarding House Bills 760 and 777. The EPA supports the bills.

Since 1983 the State of Montana and EPA have investigated and corrected contamination problems affecting public health and the environment. Several million Federal dollars have been spent in support of the Superfund Program efforts. Noteworthy efforts included installation of a replacement water supply system for citizens of Milltown, expenditures of approximately \$2.5 million to reduce discharges of wood preservatives to Silver Bow Creek in Butte, and construction of a dyke at Somers to prevent discharges of wood preservatives to Flathead Lake. In 1987, EPA will provide approximately 6 million dollars to continue these efforts at Superfund sites in Montana. Additional millions of dollars will be provided in 1988 - 1992.

The Superfund Program cannot only be a Federally funded effort. House Bills 760 and 777 will insure that there will be a strong State of Montana commitment. The State of Montana commitment is essential for several reasons.

1. The Federal program requires a 10 per cent state match to correct or clean up contamination problems. EPA will pay for 100 per cent of costs associated with investigation and selection and design of the remedy to correct or clean up contamination problems. EPA will, however, only pay for 90 per cent of the costs to implement the remedy. Without the 10 per cent State of Montana share, corrective activities cannot begin. Only in emergency situations will EPA pay for 100 per cent of clean up/corrective action.

2. At sites with responsible parties, i.e., parties responsible for causing the contamination problem, EPA asks the responsible party to clean up the site. EPA has learned from experience, however, that timely and complete responsible party clean up is most likely to occur when sufficient Federal and state match money is also available to undertake corrective activities or clean up.
3. EPA will be most likely to provide Superfund Program money to the states with strong commitments to implement the Superfund Program. One of the most visible indicators of the state's commitment is funding to provide state match to undertake corrective actions or clean up.
4. The Superfund Program is a significant environmental effort similar to the Clean Air or Safe Drinking Water programs. Montana eagerly assumed responsibility to implement these programs. The State of Montana should also assume a significant role in determining how the Superfund Program is implemented within the State. For the State of Montana to assume a significant role, it needs to commit State resources.

Thank you.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3 p. 2
DATE 3-23-87
BILL NO. HB 777

HB 777
March 23, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The Montana Department of Fish, Wildlife & Parks supports this authorization and specifically endorses the \$200,000 item to support the Clark Fork litigation. Under a provision of the "Superfund" legislation, the state was authorized to file suit to claim past damages for toxic waste disposal. We are all familiar with the history of the Clark Fork and the loss of the fishery in that river is well documented.

The state filed a \$50 million law suit as authorized by the act. This amount was the maximum allowed by law. The law further specifies that any money recovered must be put in trust to correct problems caused by the waste.

The Clark Fork River has a tremendous fishery and recreational potential. Today it lies in a chronic state of biological depression from Warm Springs to Clinton. This legislation provides the opportunity to realize the river's biological, recreational and, in turn, economic potential for Montanans.

To achieve our goal of creating a viable reclamation trust, we must successfully pursue the litigation already commenced. Successful litigation will depend upon developing a strong case and presenting it in a convincing fashion. The Department of Fish, Wildlife & Parks has committed some of its current resources to this project; specifically, a project manager and a staff attorney, both on a half-time basis. The requested funds are essential to develop a sound technical case, a creditable economic analysis and a viable legal strategy.

TESTIMONY BY THE DEPARTMENT OF STATE LANDS
ON HOUSE BILL 629
(3-23-87, Rm 405, 1:00 P.M.)

Several changes to the Metal Mine Reclamation Act are being proposed in order to provide more practical regulation for mining operations under the Act. These changes will result in a more consistent and realistic regulatory approach regarding exploration, extraction, and beneficiation of these resources.

Under the current Act, if the mineral processing operation qualifies for the Small Miners Exclusion, the operation is excluded from review and reclamation bonding requirements by the Department, regardless of its potential for environmental harm. Amending the Act to require any operator who uses a mineral processing reagent to acquire an operating permit would reduce the number of small operations which contribute to environmental degradation. The Departmental expertise would assure the operation is designed and managed in an environmentally sound manner from the beginning. The reclamation bond requirement would insure the operation is reclaimed in an environmentally acceptable manner.

Another of the proposed changes relates to the federal mining law which requires a minerals claimant to perform a minimum amount of assessment work on unpatented claims each year. It is estimated that the occurrence of claimants within Montana who hold federal small claim groups (ten claims or less) number in the hundreds or thousands. Regulation of these small assessment activities under the exploration license as is currently required is unrealistic. If this Bill is enacted, it would allow miners to comply with federal laws, and yet, not be required to obtain an exploration license for a very small disturbance. The Department estimates that disturbance resulting from these assessment activities (16,000 sq. ft. per claim) would be comparable to mining disturbances currently excluded by the Act.

Finally, current regulation denies the Small Miner Exclusion for those operators who presently have an operating permit issued by the Department. Additional mines proposed by these operators are required to obtain an operating permit regardless of how nominal the mining impacts may be. This requirement creates an economic hardship and permitting burden on both the operator and DSL which is not commensurate with the level of mining activity. A more meaningful approach would be to deny Small Miner Exclusions only to those operators who propose the exclusion within the boundaries of an operating permit, or propose to use certain processing reagents which pose a high potential for environmental harm.

NAME DAVE CONKLIN BILL NO. HB 629

ADDRESS 1919 GRIZZLY GULCH DATE 3/23/87

WHOM DO YOU REPRESENT SELF

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: (ATTACHED)

SENATE NATURAL RESOURCES

EXHIBIT NO. 6

DATE 3-23-87

BILL NO. HB629

HB 629

March 23, 1987 Testimony

Mr. Chairman and members of the Committee, my name is Dave Conklin and I speak in support of this bill with one exception. I live near Unionville at 1919 Grizzly Gulch 5 miles southwest of here. This is one of Helena's bedroom communities. It is also a mineralized area where both small miners and mining corporations have had and continue to have active prospects and mines.

Those of us who have built our homes and raise our children in this area never know where or when the next prospect or mine may be opened up or how much the cumulative effect will eventually be on decreasing our residential property values. However we have accepted the mining with the knowledge that the existing Metal Mine Reclamation Act will require these pits, scars and tailings to be reclaimed when mining is completed, except any developed by "small miners" who have limited financial resources.

House Bill 629 changes this. Under a subtle but very significant amendment on page 5 lines 3 - 9 a "small miner" can now obtain an operating permit for a larger operation, without jeopardizing his "exempt" operation on any number of smaller mines. Thus, contrary to the intent of the legislative history of this law, a "small miner" can be "big" as well as "small." Likewise, and importantly, a "big" developer could now also be "small." The change in the law appears subtle, but its impacts are not.

The 1971 legislature realized that it makes no sense to put someone out of business by attempting to regulate them. Accordingly, the "Mom and Pop" mining operation, which could not bear the regulatory burden, was exempted. In return, however, their operation had to remain small. Under HB 629, this is no longer the case.

I do not want to put these people out of business. I do not want to hinder their operations. Estimates place the number of "small miners" in Montana at several thousand, so they are not hurting under the existing law. We have tolerated their impacts in the name of fairness, and they have escaped the burden of regulation and reclamation. HB 629 will allow the mining corporation to take over where the "Mom and Pop" operation left off, and yet continue to escape any reclamation requirements.

The residents of this area have paid the price for these exemptions. We deserve better. We deserve reclamation. Therefore, we ask that you consider amending HB 629 on page 5 by reinstating lines 3 and 4 after line 9, and deleting line 7 as shown on the handout. This amendment would maintain the current requirements of the law.

I thank you for your consideration and invite you to come up and see these mines for yourselves if you wish.

HB 629

PROPOSED AMENDMENT

LC 0928/01

LC 0928/01

1 reprocessing of tailings or waste materials that does not
2 remove from the earth during any calendar year material in
3 excess of 36,500 tons in the aggregate, ~~that--holds--no~~
4 ~~operating--permit--under-82-4-335,~~ from a mine complex area,
5 ~~that does not use any mineral processing reagents, that does~~
6 ~~not conduct an operation within the boundary of an operating~~
7 ~~permit issued pursuant to 82-4-335 or within the boundary of~~
8 ~~an area previously subject to an operating permit if the~~
9 ~~permit has been revoked and the area has not been reclaimed,~~
10 and that conducts:

11 (i) operations resulting in not more than 5 acres of
12 the earth's surface being disturbed and unreclaimed; or

13 (ii) two operations which disturb and leave unreclaimed
14 less than 5 acres per operation if the respective mining
15 properties are:

16 (A) ~~the--only--operations--engaged--in--by--the--person,~~
17 ~~firm, or corporation;~~

18 (B) (A) at least 1 mile apart at their closest point;
19 and

20 (C) (B) not operated simultaneously except during
21 seasonal transitional periods not to exceed 30 days.

22 (b) For the purpose of this definition only, the
23 department shall, in computing the area covered by the
24 operation, exclude access or haulage roads that are required
25 by a local, state, or federal agency having jurisdiction

1 over that road to be constructed to certain specifications
2 if that public agency notifies the department in writing
3 that it desires to have the road remain in use and will
4 maintain it after mining ceases.

5 (12)(15) "Surface mining" means all or any part of the
6 process involved in mining of minerals by removing the
7 overburden and mining directly from the mineral deposits
8 thereby exposed, including but not limited to open-pit
9 mining of minerals naturally exposed at the surface of the
10 earth, mining by the auger method, and all similar methods
11 by which earth or minerals exposed at the surface are
12 removed in the course of mining. Surface mining does not
13 include the extraction of oil, gas, bentonite, clay, coal,
14 sand, gravel, phosphate rock, or uranium or excavation or
15 grading conducted for on-site farming, on-site road
16 construction, or other on-site building construction.

17 (13)(16) "Underground mining" means all methods of
18 mining other than surface mining.

19 (14)(17) "Unit of surface-mined area" means that area
20 of land and surface water included within an operating
21 permit actually disturbed by surface mining during each
22 12-month period of time, beginning at the date of the
23 issuance of the permit, and it comprises and includes the
24 area from which overburden or minerals have been removed,
25 the area covered by mining debris, and all additional areas

SENATE NATURAL RESOURCES
EXHIBIT NO. 6 (page 3)
DATE 3-23-87
BILL NO. HB 629

NAME TOM STEPHENS BILL NO. HB 629

ADDRESS 1523 GRIZZLY GULCH DATE 3/23/87

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: ATTACHED

SENATE NATURAL RESOURCES

EXHIBIT NO. 7

DATE 3-23-87

BILL NO. HB629

HB No. 629

Testimony, March 23, 1987
Senate Committee on Natural Resources

My name is Tom Stephens, and I appear in support of this bill with one exception. I live on Grizzly Gulch, and have a small pond in my backyard which is fed by several local springs, as well as a stream which flows down the Gulch towards town. I am located downstream from a mining operation conducted by a "small miner."

I have lived with the impacts of these mining operations for several years. In several places along the Gulch, the stream which flows through my property has been manipulated beyond recognition. Further, these "small miners" have dumped their processed tailings on to the property upstream from my home, although they do not own this property. Finally, their holding ponds, on several occasions, have breached, causing substantial erosion. The result of these activities has been an unusually high amount of sedimentation and silt occurring in my pond, and that portion of the stream which flows through my property. I have had to hire an attorney to get my pond cleaned out. I have spent a great deal of time working with the people at the Water Quality Bureau trying to get some help. One of the few regulatory requirements placed upon these "small miners" is that they cannot pollute or contaminate streams. It seems that they cannot even meet these "minor" requirements.

There are other impacts. The Air Quality Bureau has put up a monitor because of the dust that is raised by the heavy equipment.

I would accept these "small miners" if they stayed within the limits of the law. Conceivably, my property values should not be affected, but they are.

Now, after bearing the burdens of their exemptions, these "small miners" are going to be allowed to operate large scale operations, without reclaiming their small operations. Further, large mining companies, despite their obvious financial resources, will be able to operate small, unregulated mines. This is unfair to me and my neighbors.

For these reasons, I urge your support of the amendment to HB 629 which has been proposed today.

Rec'd

SENATE NATURAL RESOURCES

HB No. 629

EXHIBIT NO. 8

Testimony, March 23, 1987

DATE 3-23-87

Senate Committee on Natural Resources BILL NO. HB 629

My name is Tim Baker, and I appear in support of HB 629 with one exception. I live on Grizzly Gulch, approximately four miles southwest of the City of Helena. There is a lot of "small mining" activity on Grizzly Gulch. My wife and I live across the street from a "small mine."

We have accepted the impacts of these "exempted" operations. The impacts have been real. There is a small stream that has been manipulated beyond recognition. The heavy equipment damages the road, is operated at early hours on weekends and holidays, and the noise is often deafening. And of course, there is an aesthetic loss, in part resulting from having a pit the size of an average house, all less than 10 feet from the county road. Finally, there is the loss in property values. The property we own has lost approximately \$15,000 in value in the last 3-4 years. This is our first home, and it represents our most important investment. While our property values plummet, our "small miner" makes money.

Nevertheless, we have willingly accepted these impacts. The 1971 legislature created the "small miner" exemption as a compromise. The "small miner" benefits, in that it is free from financially burdensome regulation. This protects the "small miner." In return for these benefits, the "small miner" must remain small or meet the reclamation requirements. This protects nearby landowners as citizens of this state. A history of the reclamation laws since 1971 is found in Part B of the documents distributed to you.

We have born the burden of the exemption granted to the "small miner." Now, they have received an operating permit for a larger operation. Our "small miner" has pulled his money from the ground and become a "large scale developer," all at our expense. Yet, under HB 629, reclamation will not be required.

I understand that HB 629 is a compromise between environmental and mining interests. Neither I, nor my neighbors, were parties to this compromise. I can say unequivocally that the interests of the people of Grizzly Gulch have not been represented. Therefore, as previously indicated, we offer a proposed amendment to HB 629. The "small miner" exemption, as revised by our amendment, is restated in Part A of the documents which have been distributed. Even with our amendment, the environmental and mining interests continue to receive most of the benefits of their compromise.

I urge your support for our amendment to HB 629. As Dennis Hemmer, the Commissioner of State Lands, testified before this same Committee in 1985:

The Small Miner Exclusion statement was intended to help those truly small miners. These amendments will protect the exclusion statements from abuse while preserving the advantage for those who truly qualify.

Thank you.

PROPOSED AMENDMENT
TO HOUSE BILL NO. 629, SECTION 1

~~(11)~~ (14) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate from a mine complex area, that does not use any mineral processing reagents, that does not conduct an operation within the boundary of an area previously subject to an operating permit if the permit has been revoked and the area has not been reclaimed, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

~~(A) the only operations engaged in by the person, firm, or corporation,~~

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

B.

SENATE NATURAL RESOURCES

EXHIBIT NO. 8 (attach 2) p.1

DATE 3-23-87

BILL NO. HB 629

March 17, 1987

Senator Mike Halligan
Montana State Senate
Helena, Montana

Re: House Bill No. 629

Dear Mike:

As you know, I am very interested in a piece of legislation which will be considered by the Senate Committee on Natural Resources on Monday, March 23. Given your busy schedule this week, I thought it would be easier for both of us if I put my thoughts into writing. Hopefully, we can get together either later this week, or next Monday at lunch, so you can have an opportunity to come out to the house and view the situation for yourself.

Specifically, I am personally interested (along with a few neighbors) in House Bill no. 629, sponsored by Bob Ream and Ed Grady at the request of the Department of State Lands. While I generally do not disagree with much of the philosophy underlying this bill, there is one aspect of it which I must adamantly oppose. My dissatisfaction with this bill is based upon both philosophical and practical considerations.

On its face, this bill (attached for reference), in comparison to others, does not seem to bring about any major revisions in the laws relating to Metal Mine Reclamation. However, referring to the amendments to the definition of "Small Miner" (see pp. 4-5), one familiar with these laws recognizes a subtle but major change. Put succinctly, the requirement that a "Small Miner" not hold an operating permit for a larger scale operation is deleted (p.5, lines 3-4). Similarly, the restriction preventing the small miner from operating more than two mines is also stricken (p.5 lines 16-17). To better understand the nature of these changes, a review of legislative history is appropriate.

In 1971, the Montana legislature considered the enactment and revision of reclamation laws. House Bills numbers 243 and 244 were introduced by Rep. Harrison Fagg, and were substantially different from today's laws. For one thing, these proposals did not appear to exempt any mining activity from the operation of the reclamation laws. After a hearing in the House Committee on Environment and Resources, the original bills were scrapped in

SENATE NATURAL RESOURCES

EXHIBIT NO. 8 (attach 2) p.2DATE 3-23-87BILL NO. HB 629

their entirety. Many small mine operators had appeared in opposition. They generally testified that these laws were too restrictive and burdensome. Thereafter, proposed legislation was drafted which closely resembled the current laws. A "small miner exemption" was drafted and inserted into these bills. Further refinements were added at the hearing before the Senate Committee on Natural Resources, and these bills were enacted into law.

Several minor changes have been made to the definition of "Small Miner" since 1971 (1974, 1977, 1979, 1985). Most of these changes have resulted in further restrictions (in 1985, the definition was amended to include "reprocessing of tailings or waste"). Through these changes, there has been one common thread: the legislature has endeavored to keep the small miner "small." This is best reflected in the amendments to Section 82-4-305, M.C.A. in 1985, which severely restricted the ownership interests in exempt operations that any one small miner could hold. See § 82-4-305(2), Mont. Code Ann. See also Statements in Support from State Lands (attached). As an aside, the 1973 Montana Constitution states that "[a]ll lands disturbed by the taking of natural resources shall be reclaimed." Art. IX, Section 2(1) Mont. Const. (1972) (attached).

The end result of this legislative activity is the current body of law found at Title 82, Chapter 4, Part 3, M.C.A., entitled "Metal Mine Reclamation" (copy attached for reference). Essentially, the legislature has determined that mining is a basic and essential activity, and that proper reclamation is "necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state." § 82-4-301, M.C.A. Purposes behind this legislation include repeated references to aesthetic and scenic values, as well as an emphasis on the promotion of ground cover, soil stability, water condition, and safety condition. § 82-4-302, M.C.A.

Basically, all "disturbed land" must be reclaimed, unless resulting from an operation under the Small Miner exemption. Non-exempt activities must post reclamation bonds, file reclamation plans with State Lands, and meet other reclamation requirements. §§ 82-4-335, -336, -338, M.C.A. Operations within the definitions of "small miner" (§ 82-4-303(11), M.C.A.) must only agree in writing that they will not pollute or contaminate any stream, meet simple safety requirements, file an operating map with State Lands, and meet certain ownership criteria. § 82-4-305, M.C.A. "Small Miners" are not required to reclaim their mines when they are done. By current definition, "small

miners" may not also hold an operating permit for a larger operation. Further, they are limited in the number and size of the operations that they can conduct within a certain distance of each other and within a certain period of time. § 82-4-303(11), M.C.A. That is, since they are not required to reclaim their operations, they must be, and remain, small.

By existing practice, a "small miner" who subsequently obtains an operating permit for a larger scale operation, also has to meet the requirements of the reclamation laws for his smaller, previously exempted operation.

As I indicated earlier, HB No. 629 changes this. Under the amendment referenced above, a "small miner" can obtain an operating permit for a larger operation, without jeopardizing his "exempt" operation. Thus, contrary to the intent of the legislative history of these laws, a "small miner" can be "big" as well as "small." Likewise, and importantly, a "big" developer could now also be "small." The change in the law appears subtle, but its impacts are not.

The bright line between regulated and unregulated operations is being blurred. I would be interested to know if State Lands recognizes this, and will be able to handle enforcement responsibilities. As one who is employed in a regulatory field, I can tell you that distinguishing between those activities which are regulated and those which are not is a regulatory nightmare.

Further, the balance found by the legislature in 1971 is unsettled. Lawmakers realized that in part, the effectiveness of regulation depends upon its application to the proper entities. It makes no sense to put someone out of business by attempting to regulate them. Accordingly, the "Mom and Pop" mining operation, which could not bear the regulatory burden, was exempted. In return, however, their operation had to remain small. Under HB No. 629, this is no longer the case.

I am not solely interested in this legislation because of the inherent conflict with the philosophy underlying the existing laws. We have a "small miner" who is currently operating near our home on Grizzly Gulch. Because of the high gold prices, the proliferation of this type of activity in our area seems probable. We have tolerated these activities conducted under the "small miner" exemption. There have been impacts from the operations, including heavy equipment on the road, considerable road damage, early morning operations on weekends and holidays, aesthetic loss, destruction and manipulation of a small nearby stream, and a pit the size of an average house, located less than

STATE OF MONTANA
EXHIBIT NO. 8 (attach 2) p. 4
DATE 3-23-87
BILL NO. HB 629

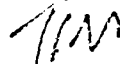
ten feet from the road. These "small miners" have applied for an operating permit for a large operation on the other side of town. State Lands has indicated that it will be granted.

I do not want to put these people out of business. I do not want to hinder their operations. Estimates place the number of "small miners" in this state at several thousand, so they are not hurting under the existing laws. The point is this: we have tolerated their impacts in the name of fairness, and they have escaped the burden of regulation and reclamation. Now they are on the verge of no longer being a "Mom and Pop" operation. In accord with the compromise that was reached by the legislature in 1971, they should be required to comply with the reclamation requirements. We, the various residents of Grizzly Gulch, have paid the price for their exemption. We deserve reclamation. As a final attachment, you will find a proposed amendment to HB No. 629. This amendment basically maintains the current requirements, and retains most of the changes proposed by State Lands.

I would like you to come up and see the mine. It would be very important to myself and others. Bring other legislators who would be interested. If I cannot influence your opinion, then at least I insist that you fully comprehend what is at stake.

Thank you for your consideration. I am indebted to you just for reading this. I will contact you soon.

Sincerely,



Timothy R. Baker

TESTIMONY FOR HOUSE BILL 638 - 1985

FROM DENNIS HEMMER, COMMISSIONER OF STATE LANDS

The Department of State Lands supports House Bill 638 to amend the Metal Mine Reclamation Act for the following reasons:

1. Section 82-4-303(10)(b) needs to be amended to eliminate the possibility of conducting exploration activities under a Small Miners Exclusion Statement. If exploration activities are contemplated, there is specific language in the Act (Section 82-4-331) to address those concerns. Exploration under the exclusion statement will result in a large number of unreclaimed disturbances not contemplated under the exclusion's original intent.

2. Section 82-4-305(2) needs to be amended to eliminate a current oversight in the Act that presently allows an individual to have several Small Miners Exclusion Statements which is in direct conflict with the definition of a "Small Miner." At the present time, there are numerous mining operations that are owned and operated by the same person or group of persons operating under multiple Small Miners Exclusions by simply changing the name of the mine owners, partners or corporate structure. This practice is clearly in violation of the intent of the Small Miners Exclusion provision and privilege under the Act. The result is disturbances in excess of those allowed going unreclaimed. ★

3. Section 82-4-361(1) needs to be amended to include violations of the Small Miners Exclusion Statement requirements under the general provision for violations and penalties as currently provided for in the Act. The present system for pursuing violation of the SMES under Section 82-4-305(2) requires that the County Attorney pursue misdemeanor which is a criminal offense against the Small Miner. This amendment would enable the Department to pursue a violation as a civil penalty, thus simplifying the current procedure. This would also relieve the County Attorney of the additional responsibility of pursuing misdemeanor offenses against Small Miners.

[The Small Miner Exclusion statement was intended to help those truly small miners. These amendments will protect the exclusion statements from abuse while preserving the advantage for those who truly qualify.] ★

Water Courts, Title 3, ch. 7.
 Environmental Quality Council, Title 5, ch. 16.
 Coal severance tax, Title 15, ch. 35.
 Oil and gas severance tax, Title 15, ch. 36.
 Mining license taxes, Title 15, ch. 37.
 Resource indemnity trust tax, Title 15, ch. 38.
 Purpose of the coal tax trust fund, 17-6-303.
 Report on potential uses of coal tax trust fund, 17-6-323.
 Parks, Title 23, ch. 1.
 Recreation, Title 23, ch. 2.
 Health and Safety, Title 50.
 Environmental Protection, Title 75.
 Uniform Transboundary Pollution Reciprocal Access Act, Title 75, ch. 16, part 1.
 State Lands, Title 77.
 Agriculture, Title 80.
 Livestock, Title 81.
 Minerals, Oil, and Gas, Title 82.

Water Use, Title 85.
 Fish and Wildlife, Title 87.
 Renewable resource development, Title 90, ch. 2.
 Renewable energy sources research and development, Title 90, ch. 4.
Constitutional Convention Transcript Cross-References
 Adoption, Trans. 2938, 2939.
 Committee report, Vol. II 550, 552, 554, 556, 561, 562, 931, 933, 935, 939, 1068.
 Debate — committee report, Trans. 1199 through 1271, 1274, 1275, 1637 through 1640.
 Debate — style and drafting report, Trans. 2210, 2211, 2928.
 Delegate proposals, Vol. I 75, 96, 107, 108, 193, 240, 252, 261, 308, 309.
 Final consideration, Trans. 2454, 2455.
 Text as adopted, Vol. II 1099.

Section 2. Reclamation. (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion.

Compiler's Comments

1974 Amendment: Constitutional Amendment No. 1 (see Appendix to 1975 Laws of Montana) inserted subsection designation "(1)" and added (2) and (3).

Cross-References

The Montana Resource Indemnity Trust Act, Title 15, ch. 38.
 Environmental contingency grant program, Title 75, ch. 1, part 11.
 Notice to surface owner of reclamation plan prior to commencement of mining operation, 82-2-303.

Reclamation, Title 82, ch. 4.
 Restoration following plugging of oil or gas well, 82-11-123.
Constitutional Convention Transcript Cross-References
 Adoption, Trans. 2938, 2939.
 Committee report, Vol. II 552, 555, 556, 931, 933, 935, 939, 1068.
 Debate — committee report, Trans. 1199, 1200, 1275 through 1301, 1353 through 1363.
 Debate — style and drafting report, Trans. 2211 through 2213, 2928.
 Final consideration, Trans. 2455, 2456.
 Text as adopted, Vol. II 1099.

Section 3. Water rights. (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

information in any application, record, report, plan, or other document filed required to be maintained pursuant to this part shall upon conviction be punished by a fine of not more than \$10,000 or by imprisonment for not more than 1 year, or both.

8) Any person who except as permitted by law willfully resists, prevents, obstructs, or interferes with the department or its agents in the performance of duties pursuant to this part shall be punished by a fine of not more than \$2,500 or by imprisonment for not more than 1 year, or both.

9) No employee of the department performing any function or duty under this part shall have a direct or indirect financial interest in any strip- or underground-coal-mining operation. Whoever knowingly violates the provisions of this subsection shall upon conviction be punished by a fine of not more than \$2,500 or by imprisonment of not more than 1 year, or both.

History: En. Sec. 23, Ch. 325, L. 1973; R.C.M. 1947, 50-1056; amd. Sec. 17, Ch. 550, L. 1979; amd. Sec. 5, Ch. 437, L. 1981; amd. Sec. 1, Ch. 499, L. 1983; amd. Sec. 1, Ch. 24, L. 1985; amd. Sec. 1, Ch. 217, L. 1985.

Compiler's Comments

§5 Amendments: Chapter 24 in (2) near end of first sentence, before "the administration", changed "or impairs" to "and does not impair". Chapter 217 in (1) near middle of subsection, changed "\$750 for each day", inserted "up to 30 days" and inserted last sentence.

§33 Amendment: At beginning of (1), inserted exception clause; and inserted (2).

§31 Amendment: Reworded the language of subsection (1) to clarify that "term or condition" refers to a permit.

References

"Willfully" defined, 1-1-204.

"Knowingly" defined, 1-1-204, 45-2-101.

Contested administrative cases, Title 2, ch. 4, part 6.

Appeal of contested administrative cases, Title 2, ch. 4, part 7.

Persons subject to jurisdiction — process — service, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

Criminal responsibilities of corporations, 45-2-311.

Place of imprisonment when none specified, 46-18-211.

Disposition of fines and forfeitures, 46-18-603, 82-4-241.

"Person" defined, 82-4-203.

Part 3

Metal Mine Reclamation

Part Cross-References

Prospecting permits and mining leases on unowned lands, Title 77, ch. 3, part 1.

Landowner notification of surface operations, Title 82, ch. 2, part 3.

82-4-301. Legislative findings. The extraction of mineral by mining is a basic and essential activity making an important contribution to the economy of the state and the nation. At the same time, proper reclamation of mined land and former exploration areas not brought to mining stage is necessary to prevent undesirable land and surface water conditions detrimental to the general welfare, health, safety, ecology, and property rights of the citizens of the state. Mining and exploration for minerals take place in diverse areas where geological, topographical, climatic, biological, and sociological conditions are significantly different, and reclamation specifications must vary accordingly. It is not practical to extract minerals or explore for minerals required by our society without disturbing the surface or subsurface of the earth and without producing waste materials, and the very character of many types of mining operations precludes complete restoration of the land to its original condition. The legislature finds that land reclamation as provided in

this part will allow exploration for and mining of valuable minerals while adequately providing for the subsequent beneficial use of the lands to be reclaimed.

History: En. Sec. 1, Ch. 252, L. 1971; R.C.M. 1947, 50-1201.

82-4-302. Purpose. (1) The purposes of this part are to provide:

(a) that the usefulness, productivity, and scenic values of all lands and surface waters involved in mining and mining exploration within the boundaries and lawful jurisdiction of the state will receive the greatest reasonable degree of protection and reclamation to beneficial use;

(b) authority for cooperation between private and governmental entities in carrying this part into effect;

(c) for the recognition of the recreational and aesthetic values of land and a benefit to the state of Montana; and

(d) priorities and values to the aesthetics of our landscape, waters, and ground cover.

(2) Although both the need for and the practicability of reclamation may vary, the control the type and degree of reclamation in any specific instance, the primary objective will be to establish, on a continuing basis, the vegetative cover, soil stability, water condition, and safety condition appropriate to any proposed subsequent use of the area.

History: En. Sec. 2, Ch. 252, L. 1971; R.C.M. 1947, 50-1202.

82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Board" means the board of land commissioners or such other person or employee or state agency as may succeed to its powers and duties under this part.

(3) "Department" means the department of state lands.

(4) "Disturbed land" means that area of land or surface water disturbed beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, and other dumps, and all similar excavations or covering resulting from the operation, and which have not been previously reclaimed under the reclamation plan.

(5) "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-305 and 82-4-310.

(6) "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from beneath the surface or from the surface of the earth for the purpose of milling, concentrating, refinement, smelting, manufacturing, or other subsequent processing or for stockpiling for future use, refinement, or smelting.

(7) "Mining" commences at such time as the operator first mines or extracts minerals in commercial quantities for sale, beneficiation, refining,

processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(8) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(9) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

(10) "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) such maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(11) (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that holds no operating permit under 82-4-335, and that conducts:

(i) operations resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

(12) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(13) "Underground mining" means all methods of mining other than surface mining.

(14) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(15) "Vegetative cover" means the type of vegetation, grass, shrubs, or any other form of natural cover considered suitable at time of reclamation.

History: En. Sec. 3, Ch. 252, L. 1971; amd. Sec. 1, Ch. 281, L. 1974; amd. Sec. 13, Ch. 311, L. 1977; amd. Sec. 1, Ch. 423, L. 1977; R.C.M. 1947, 50-1203; amd. Sec. 1, Ch. 588, L. 1977; amd. Sec. 1, Ch. 386, L. 1985; amd. Sec. 1, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendments: Chapter 386 in (11)(b) near end, after "mining", deleted "or exploration".

Chapter 453 in (4) after "overburden", inserted "tailings, waste materials"; inserted (8);

in (9) after "exploration for", deleted "or development" and after "earth", inserted "reprocessing of tailings or waste materials, or operation of a hard-rock mill"; in (11)(a) after "but not limited to", inserted "or reprocessing of tailings or waste materials".

82-4-304. Exemption — works performed prior to promulgation of rules. No provision of this part shall be applicable to any exploration or mining work performed prior to the date of promulgation of the board's rules pursuant to 82-4-321 relating to exploration and mining. No provision of this part is applicable to the reprocessing of tailings or waste rock that occurred prior to the date of promulgation of the board's rules regarding those activities. If, after the date of promulgation of rules applicable to mills not located at a mine site, work is performed at such a mill that was constructed and operated before promulgation of those rules, this part applies only to the areas initially disturbed after promulgation of those rules.

History: En. Sec. 19, Ch. 252, L. 1971; R.C.M. 1947, 50-1219; amd. Sec. 4, Ch. 201, L. 1977; amd. Sec. 2, Ch. 453, L. 1985.

Compiler's Comments

1985 Amendment: At end of first sentence, after "82-4-321", inserted "relating to exploration and mining"; and inserted second and third sentences.

Cross-References

Adoption and publication of administrative rules, Title 2, ch. 4, part 3.

82-4-305. Exemption — small miners — written agreement. (1) No provisions of this part shall apply to any small miner when the small miner annually agrees in writing:

(a) that he shall not pollute or contaminate any stream;
 (b) that he shall provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals; and

(c) he shall provide a map locating his mining operations. Such map shall be to a size and scale as determined by the department.

(2) For small-miner exemptions obtained after September 30, 1985, no small miner may obtain or continue an exemption under subsection (1) unless he annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which he is a member or partner has a small-miner exemption; and

(ii) no corporation of which he is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

History: En. Sec. 20, Ch. 252, L. 1971; amd. Sec. 15, Ch. 391, L. 1973; amd. Sec. 10, Ch. 391, L. 1974; R.C.M. 1947, 50-1220; amd. Sec. 2, Ch. 588, L. 1979; amd. Sec. 2, Ch. 386, L. 1985.

Compiler's Comments

1985 Amendment: In (2) substituted present language for "Failure to comply with the regulations stipulated in this section will constitute a misdemeanor, and this offense will subject the miners or operators of said project to a fine of not less than \$10 or more than \$100, payable to

the department of revenue of the state of Montana or any board, commission, or person authorized to collect said fine."

Cross-References

Penalty for violation of conditions of small-miner exemption, 82-4-361.

82-4-306. Confidentiality of application information. Any and all information obtained by the board or by the director or his staff by virtue of applications for exploration licenses and all information obtained from small miners is confidential between the board and the applicant, except as to the name of the applicant and the county of proposed operation; provided that all activities conducted subsequent to exploration and other associated facilities shall be public information and conducted under an operating permit. It is further provided that any information obtained by the board or by the director or his staff by virtue of such applications is properly admissible in any hearing conducted by the director, the board, appeals board, or in any judicial proceeding to which the director and the applicant are parties and is not confidential when a violation of the part or rules has been determined by

Senate Hearing on House Bill 629

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO METAL MINE

RECLAMATION and Amending Sections 82-4-303, 82-4-305,

and 82-4-335, MCA

Ladies and Gentlemen, my name is Russell M. Dugdale. I graduated from Montana College of Mineral Science and Technology in 1956 with a B. S. Degree in Metallurgy, with Mineral Dressing option. I have worked in industry all of my professional career, with the last seven years dedicated to the handling of cyanide heap-leaching operations. I have worked for Anaconda Co., American Smelting and Refining Co., Cominco-American, Inc., Bunker Hill Co., Zortman-Landusky Mining Co., Grayhall Resources, Inc., and at present I am self-employed as owner/operator of Metallurgical Services, Inc. (providing services in problem solving, process design, waste management, heap leaching, precious metals recovery and magnetic water treatment.)

Assisting small miners get into production is my main goal. My livelihood stems from small miners and as such, anything that stands in the way of their being successful is important to me. HB 629 is going to impact the small miners in a dramatic way. The way the bill is written denies any subterfuge but the outcome of it will be to eliminate small miners. Neither the way the bill is written, nor the MMA's interpretation of the bill, alludes to the fact that a sizeable bond will have to be posted prior to operation, as well as procurance of an operating permit which could resemble an Environmental Impact Statement before it is done and could cost excessive time and money.

A major complaint I have is that the bill does not state that the intent of the bill is to shut down small miners, thereby mollifying the immediate effect on people. If the bill passes and people find that it precludes small miners, a great deal of attention will be aroused. This bill addresses all "Mineral Processing reagents," including flotation reagents, and any chemicals such as cyanide, acids and Thiorea.

A small miner would not be allowed to use soap or water in his panning operations without having an operating permit. Effectively the bill reduces small miners to the hobby status who will be allowed to locate corners and hand sort rock and haul it to a smelter, but will not be allowed to use any machinery or reagents for the beneficiation of the ore.

SENATE NATURAL RESOURCES

EXHIBIT NO. 9 (p.2)

DATE 3/23/87

BILL NO HB 629

Initially a small miner employs from four to 10 people with that number growing to 30 when the mine gets in full swing. Purchasing an operating permit (estimated \$50,000.00) would make it impossible to fund a small mine. The bill alludes not only to cyanide but also to any chemicals that can be used in any process, such as flotation.

Thank you for this opportunity to present this information to you, and I will do my best to answer any questions that you have.

Testimony before the Senate Natural Resources Committee asking that House Bill 629 be amended.

There are several here to testify on our behalf and we will point out to the committee that:

1. The bill can readily be amended to address the long range problem by simply requiring adequate training.
2. Mining chemicals in Montana are in their second century and have an excellent safety record. We need to keep our guard up. Excellent safety training is available.
3. The law abiding small miners need not be burdened by the actions of a few by the needless bonds and red tape that are needed for an operating permit.
4. The mining of precious metal, "Montana's sleeping giant" can be promoted to add economic stimulus to the state and push Montana farther away from the "we con't want business" syndrome.
5. This is very serious. You may well "throw the baby out of the bath water". You will burden the 95% or more who strive to be legal to control 1 or 2% of the 5% who are "slobs".
6. Working under the Small Miners' Exclusion already has adequate regulations to protect the public just abiding by the rules.
7. The part of the bill which we object to would require all who use the chemicals of mining to secure an operating permit. That permit will probably required a \$50,000.00 bond which in today's market is a CD assigned to the State of Montana. It would also take from three to six months to secure the permit at whatever cost that would be - \$10,000.00, \$15,000.00 or possibly \$20,000.00.

Mr. Chairman, with your permission I would like to call on my colleagues to address you and perhaps I could close by presenting our amendment.

SENATE NATURAL RESOURCES
COMMITTEE
JIT NO. 9 p. 3
3/23/87
BILL NO. HB 629

SENATE NATURAL RESOURCES
EXHIBIT NO. 964
DATE 3/23/87
BILL NO. HB 629

INFORMATION FOR THE SENATE NATURAL RESOURCES COMMITTEE

ON HOUSE BILL 629

March 23, 1987

COMPARISONS

ITEM	UNDER SMALL MINERS' EXCLUSION STATEMENT	UNDER HB 629 EQUIVALENT TO OPERATING PERMIT	UNDER HB 629 AMENDED FOR SAFETY TRNG	UNDER EXPLORATION PERMIT	GROUND WATER POLLUTION CONTROL PERM
1. Time Required for Permitting	About 12 hours	About 6 months	About 10 days	About 20 days	60 days
2. Bonding Required	None	About \$50,000	None	About \$10,000	None
3. Permit					
Cost	None	\$25.00	None	\$5.00	None
Cost of Preparation	None	\$5,000-\$50,000	None	\$500.00	\$500.00
Time to Receive Permit	About 12 hours	About 6 months	About 10 days	About 20 days	60 days
4. Options for turning Ore into Money					
Sell to smelters					
Permits	None	None	None	None	None
Est. Cost	140.00/ton	140.00/ton	140.00/ton	140.00/ton	140.00/ton
Milling or treating on site					
Permits	None	Operating permit	Safety training		Ground water pollution control perm
Bond	None	About \$50,000	None	\$10,000	None
Violation Penalty	\$10,000/day	\$10,000/day	\$10,000/day	\$10,000/day	\$10,000/day
Approx Cost/Ton	\$10-\$15-\$20	\$10-\$15-\$20	\$10-\$15-\$20	\$10-\$15-\$20	\$10-\$15-\$20

FOURTH DRAFT
AMENDMENTS TO HOUSE BILL 629
BY REAM

SENATE NATURAL RESOURCES
EXHIBIT NO. 10
DATE 3/23/87
BILL NO. HB629

PROPOSED TO THE SENATE NATURAL RESOURCES COMMITTEE

THE HONORABLE TOM KEATING, CHAIRMAN

MARCH 23, 1987

Room 405 - Capitol - 1:00 p.m.

BY

SOUTHWEST MONTANA MINING DEVELOPMENT & INVESTMENT COUNCIL
c/o Mary Ann Sharon, State Bank Bldg., Dillon, MT

LEWIS AND CLARK CHAPTER OF MONTANA MINING ASSOC.

AND

KOEHLER STOUT, PROFESSOR, ATTORNEY, MINING ENGINEER
Butte, Montana

1. Page 2, Line 11 following "in" reinstate "82-4-306"
2. Page 2, Line 11 following "82-4-310" strike "and work performed by prospectors"
3. Page 2, Line 21 through 23 strike "in their entirety"
4. Page 2, Line 24 following "operations," delete "including but not"
5. Page 4, Line 25 following "acids," insert "acid generating reagents"
6. Page 2, Line 24 strike "(B)" insert "(a)"
7. Page 3, Line 7 following "continguous" delete "unpatented"
8. Page 3, Lines 17 through 21 strike "in their entirety"
9. Page 3, Line 22 strike "(13)" insert "(12)" and renumber subsequent subsections.
10. Page 4, Line 25 following "of" insert "improving"
11. Page 5, Line 3 following "aggregrate," reinstate "that holds no operating permit under 82-4-335"

Amendments.
Page 2

SENATE NATURAL RESOURCES

EXHIBIT NO. 10 (p.2)

DATE 3/23/87

BILL NO. H0629

12. Page 5, Line 4 following "stricken" "82-4-335," strike "from a mine complex area," and lines 6, 7, 8 and 9
13. Page 7, Line 19 following "reagents" insert "without first being thoroughly schooled and acquainted with the reagent's use"
14. Page 9, Line 3 following "reagents" insert "without thorough training in their use"
15. Page 12, Line 9 strike the new section Section 4 in its entirety
16. Page 13, Line 13 strike new section Section 5 in its entirety

A TESTIMONY BEFORE THE SENATE NATURAL RESOURCES COMMITTEE
ASKING THAT HOUSE BILL 629 BE AMENDED

Mr. Chairman:

My name is Ed Battermann from Butte and I earn my living by exploration drilling for large and small outfits. House Bill 629 would certainly discourage exploration and undermine my business.

There are certain operations with appealing potential that I drill for on shares. I would probably have to look to Nevada for such participation.

SENATE NATURAL RESOURCES
EXHIBIT NO. 11
DATE 3-23-87
BILL NO. HB 629

ana Standard Butte, Monday, March 9, 1987

Tourism, mining could lift economy

HELENA (AP) — Tourism and precious-metal mining are two bright spots in an otherwise gloomy economic outlook for Montana, the chief economist for Norwest Corp. of Minneapolis says.

Sung Won Sohn spoke Friday to a group of business and political bigwigs in Helena, and said Montana should spend more time and money promoting itself as a destination for tourists.

"Montana is really like the Switzerland of the United States," he said, but not many people know about the state's beauty and its tourist attractions.

Sohn also endorsed the idea of a hotel-motel "bed" tax that would raise money for tourism promotion. Montana should pursue tourists from elsewhere in the United States and foreign countries, he said.

The economist also said he is encouraged by the hard-rock mining potential in Montana, and cited proposed gold and platinum mines in the southwestern part of the state.

He said he was not encouraged by short-term prospects for oil, gas, lumber or coal production in the state.

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A TESTIMONY BEFORE THE SENATE NATURAL RESOURCES COMMITTEE
ASKING THAT HOUSE BILL 629 BE AMENDED

SENATE NATURAL RESOURCES COMMITTEE - March 23, 1987

SENATE NATURAL RESOURCES

EXHIBIT NO. 11 (p.2)

DATE 3-23-87

BILL NO. HB629

Mr. Chairman:

Those heap leaching ore milling under the Small Miners' Exclusion are required to secure a Ground Water Pollution Control Permit from the Department of Health. This permit specifically details requirements to assure the ground water integrity, holds a \$10,000.00 a day hammer over one's head and goes through a public notice. Oftentimes more than 60 days are required. These are no "pussycats".

This tells me that adequate controls are already in place.

B-4 Dillon Tribune-Examiner Tuesday, January 27, 1987

Virginia City firm seeks permit for gold mill

A Virginia City based gold mining firm has applied for a new ground water pollution control permit to operate a mill for recovery of precious metals.

United States Grant Gold Mining Company, Montana LTD, has applied for a permit that will expire in January 1992 to operate an existing flotation mill for recovery of precious metals, according to a

public notice filed by the company Jan. 5.

The operation, according to permit, intends to process an estimated 25 to 30 tons of material per day. Ore will be crushed and milled and then a flotation process will be utilized to generate a gold bearing concentrate, the permit says.

Waste tailings and process solutions will be discharged to an existing surface impound-

ment. The surface impoundment is located in the valley bottom next to Alder Creek and is reportedly lined with bentonite.

A GROUND water monitoring well is installed adjacent to the impoundment, the permit says.

If there are no objections to the permit request the department will issue a final determination within 60 days.

DENIS MARKOVICH
415 MOUNT HIGHLAND DRIVE
BUTTE MT.
59701

SENATE NATURAL RESOURCES

EXHIBIT NO. 12

DATE 3-23-87

BILL NO. HB629

I would like to introduce myself, my name is Denis Markovich. I am presently working for a small mining operation in south western Montana. At this company I am in charge of all cost accounting and the finances of this company.

Mr Dugdale has asked me to give to you a economical view of what House Bill 629 will do to the small mining company's.

If you look at the Start Up Cost sheet. You will see that before we could even start to mine our cost amounted to \$96,558.00. But if House Bill 629 was passed before we started we would have needed another \$50,000.00, bringing our start up cost to \$146,558.00. My company would not have started up because we could only start with \$100,000.00.

If the company that I am working for now, has to put this additional \$50,000.00 into a bond the company will close down.

The reason for is the financial strain the \$50,000.00 will put on our company. The \$50,000.00 will have to come out of the budget for something else. Most likely the money would have to come from our exploration/core drilling program. If we take the money from the core drilling program, we will have to do without it. If we do not have the exploration/core drilling program and the results from this program. We will not be able to obtain further financing for our company.

Without additional funding we will not be able to buy better equipment for the mine and mill. Without this equipment we will not be able to produce enough ore to bring the company into profit.

If we are forced to close down, the surrounding community will lose \$263,031.98 in revenue from our company. If we close down most likely about 10 other small mines in the general area will also close because of this bill. So the community could lose an additional \$2,630,000.00 in revenue.

I ask you, please consider what this House Bill 629, will do to the small miner's of Montana. And what the economical impact this will have on the already strained economic system in Montana

START UP COST
BY: DENIS MARKOVICH
3-18-87

SENATE NATURAL RESOURCES

EXHIBIT NO. 12 (p.2)

DATE 3-23-87

BILL NO. HB629

MILL PURCHASE	\$38,000.00
MILL LAND LEASE	\$3,000.00
NEW EQUIPMENT	
MILL	\$7,558.00
	\$26,500.00

BONDING	
WORKMENS COMPENSATION	\$10,000.00
U.S. FORESTSERVICE	\$8,000.00

ADMINISTRATION	
LAWYER FEES	\$2,500.00
ACCOUNTING FEES	\$1,000.00

	\$96,558.00

HB 629 IF PASSED	
METAL MINE RECLAMATION	
BOND (ESTIMATED)	\$50,000.00
	\$96,558.00
	=====
NEW START UP COST	\$146,558.00

TOTAL COST AS OF MARCH 1, 1987

EXPENSES	\$313,077.20
START UP COSTS	\$96,558.00
	=====
	\$409,635.20

LOST REVENUE FROM THE CLOSURE
OF ONE MINE (6 PEOPLE EMPLOYED)

SENATE NATURAL RESOURCES
EXHIBIT NO. 12(p.3)
DATE 3-23-87
BILL NO. 4629

STATE TAXS	\$10,829.00
LABOR	\$136,800.00
MINE TOTAL	\$37,580.00
HUALING TOTAL	\$9,090.00
MILL TOTAL	\$28,981.00
OFFICE TOTAL	\$14,457.36
LEASE TOTAL	\$25,294.62
=====	
	\$263,031.98

FUTURE REVENUE FOR MONTANA BUSINESS
\$1,500,000.00

LOST REVENUE FROM 10 MINES
\$2,630,319.80

SMALL MINING OPERATION
BY: DENIS MARKOVICH
3-18-87

SENATE NATURAL RESOURCES
EXHIBIT NO. 12 (P4)
DATE 3-23-87
BILL NO. HB629

LABOR		
MINE	\$4,800.00	\$57,600.00
HAULING	\$1,600.00	\$19,200.00
MILL	\$4,000.00	\$48,000.00
OFFICE	\$1,000.00	\$12,000.00

TOTAL	\$11,400.00	\$136,800.00
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EXPENSES

MINE

CONTRACT LABOR	\$834.00	\$10,008.00
FUEL	\$364.50	\$4,374.00
MISCELLANEOUS	\$270.00	\$3,240.00
SUPPLIES	\$1,548.00	\$18,576.00
TIMBER	\$556.88	\$6,682.50
VEHICAL	\$427.80	\$5,133.60
REPAIR/MAINTENCE	\$270.00	\$3,240.00
FREIGHT/HANDLING	\$31.50	\$378.00

MINE TOTAL	\$3,468.68	\$41,624.10
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HAULING

FUEL	\$195.00	\$2,340.00
MISCELLANEOUS	\$225.00	\$2,700.00
SUPPLIES	\$75.00	\$900.00
VEHICAL	\$150.00	\$1,800.00
REPAIR/MAINTENCE	\$112.50	\$1,350.00

HAULING TOTAL	\$757.50	\$9,090.00
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MILLING

FUEL	\$75.00	\$900.00
MISCELLANEOUS	\$270.00	\$3,240.00
SUPPLIES	\$1,548.00	\$18,576.00
REPAIR MAINTANCE	\$270.00	\$3,240.00
FREIGHT/HANDLING	\$64.50	\$774.00
UTILITIES	\$525.00	\$6,300.00
LAB SUPPLIES	\$75.00	\$900.00
OUTSIDE ASSAY'S	\$337.50	\$4,050.00

MILLING TOTAL	\$3,165.00	\$37,980.00
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OFFICE

TAXS/FICA	\$1,193.40	\$14,320.80
TAXS/FEDERAL	\$2,299.32	\$27,591.84
TAXS/STATE	\$902.45	\$10,829.34
BANK CHARGES	\$9.00	\$108.00
TAXS, FEES	\$52.50	\$630.00
LEGAL/ACCOUNTING	\$270.00	\$3,240.00

OFFICE SUPPLIES	\$248.28	\$2,979.36
OFFICE RENT	\$250.00	\$3,000.00
TELEPHONE	\$300.00	\$3,600.00
UTILITIES	\$75.00	\$900.00

OFFICE TOTAL	\$5,599.95	\$67,199.34

LEASES		
EQUIPMENT LEASE	\$3,750.00	\$45,000.00
LAND LEASE	\$750.00	\$9,000.00
ROYALTIES	\$1,000.00	\$12,000.00
OFFICE EQUIPMENT	\$150.00	\$1,800.00
RADIO LEASE	207.885	\$2,494.62

LEASE TOTAL	\$5,857.89	\$70,294.62
=====		
EXPENSES TOTAL	\$18,849.01	\$226,188.06
=====		
BUDGET TOTAL	\$30,249.01	\$362,988.06
CONTENDANCY	15%	15%
=====		
GRAND TOTAL	\$34,786.36	\$417,436.27

Senate Hearing on House Bill 629

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO METAL MINE RECLAMATION

and Amending Sections 82-4-303, 82-4-305 and 82-4-335, MCA

Ladies and Gentlemen, my name is Koehler Stout, A consultant in the mineral industry, dealing primarily with small mines and exploration projects. I am a registered professional Engineer and Land Surveyor in Montana and admitted to practice law in Montana. I have a B.S. in Mining Engineering and a M.S. in Geological Engineering from the Montana College of Mineral Science and Technology, an LLB from LaSalle University of Chicago, Ill. and an Honorary Doctorate in Engineering from the Montana University System. In 1971 when this act was first passed, I was an officer in the Southwest Montana Mining Association, the forerunner of the present Montana Mining Association. I was president of the Montana Mining Association in the middle 1970's, but I am speaking for myself and some members of the Silver Bow Chapter of the Montana Mining Association. I did however, not have time to contact other chapters of the association to solicit their feelings on this bill.

The Southwest Montana Mining Association lobbied long and hard for the small-miner exclusion in 1971. The reason was that the ordinary small-miner, developer and prospector could not afford the bonding requirements of the bill, and it would put him or her entirely out of business. This is as true in 1987 as it was in 1971. Even today, the small miner, developer and prospector simply cannot afford an expensive bond when he disturbs insignificant amounts of land and still does his necessary improvement work. The small-miner exclusion act has worked well for the past 16 years, and several of today's large scale production operations in Montana were either discovered and, or, promoted by small miners and prospectors. In 1971, there was only one large-scale mineral producer in the state. Now there are four active ones, two nearing construction completion, at least two or three more in the decision stage and several large-scale exploration projects. Let's not stop this progress by more restrictive legislation when the state so deperately needs added mineral development.

This proposed bill greatly restricts the small miner and practically does away with the small-miner exclusion because there are very few, if any, mines in Montana that can produce a salable product that does not need upgrading except for some placer mines. Other people at this hearing either have, or will, testify that the mineral processing reagents as defined in this law will raise havoc with many of the small mines that we have in Montana. It boils down to the front-end high bonding costs for a person that can hardly make ends meet as it is. I concur with their analysis of the situation and their recommendations.

There are, however, other parts of this bill that are likewise devastating to the small-mining industry. As one of the very few people present here who was at the initial hearings on the small-miner exclusion, we certainly meant that the small miner included the developer and prospector who was developing his claim and the person who was doing annual assessment work. Although I could not find my notes on that hearing, remembered that I was one who wanted to include the word prospector in this definition, but the committee felt at that time that any small miner was

DATE 3-23-87

also a developer and prospector and it would be interpreted that way. Hence, I was surprised to learn only a few days ago that the definition of a prospector was included in this bill and the restrictions to the prospector were far greater than to the small miner. This concept does not make sense to me. Why? The whole basis of mining law when locating and patenting a claim is making a discovery. If a person doesn't make a discovery, he or she can claim no title to the ground.

What is a discovery? The most often quoted definition was made in the case of Castle v. Womble in the late 1800's where the Dept. of Interior stated it as a discovery of minerals, within the limits of the claim, which would justify a person of ordinary prudence in the further expenditure of time and money with reasonable prospects of success in developing a profitable mine. This is called the prudent-man rule. In more recent interpretations of this definition while making the requirements more stringent, the Dept of Interior in expanding the above definition, now says that in addition to the old prudent-man rule, it is required that minerals have been found and developed with a reasonable expectation that a paying and profitable enterprise will result. They require quantity, quality and a market for the mineral so that a profit can be projected on the production of the mineral from the deposit. As one can see from these requirements, one must do a lot of work just to show that a discovery exists and before a mine can produce one. What is this person called, a small-miner, a developer or a prospector? Certainly they are one and the same and the developer and, or prospector needs the small-miner exclusion as much as, if not more, than the small miner. The mining association of that time and ever since, until possibly now, considered the prospector, the developer and the small miner the same and they should be subject to the same law.

Not only is this proposed definition restrictive to the prospector, it puts the owner of a patented mining claim in a position that he cannot do any improvement work on his claim unless he posts a bond or meets the small-mining requirement. (What ever that is?) This concept, as well as definition (9) is certainly in conflict with section 82-2-103 (2) RCM where it says work to hold patented and unpatented contiguous claims may be done on a patented claim in the contiguous group. Of what purpose is the proposed 10 claim restriction to the prospector? In the original 1971 law, it said that assessment work could only be done on 10 contiguous claims and if a person had more than 10 claims, then they had to do assessment work on each 10-claim group. Even the environmental groups joined the mining association to get rid of this requirement because it caused much unnecessary digging and it defeated the purpose of reclamation and development work for the group mining claims. Let's not put unworkable provisions in again.

I believe that definition (9) would comply with the rest of Montana law if the word unpatented was struck out of the definition. The perceived problem on prospecting definitions and permits could be very simply solved by dropping the proposed definition in 82-4-303 (12) and 82-4-335 new section 4 and making the following definition change in 82-4-303 14 (a) "Small-Miner" means a person, firm or corporation that engages in the business of improving, mining or reprocessing the tailings or waste materials - - - - - . The addition of the word (improving) will take care of all assessment work requirements whether it be prospecting or developing as defined in both State and Federal statutes. With this simple change, everybody who prospects, develops or runs a small mine will have to file a small-miner exclusion statement which gives the

Dept. of State Lands the information that it needs, and the industry will not have to face another trial period of determining what definition of a prospector does to the industry and to the Department. The same protection exists in the reclamation law now as it has since 1971. Let's not tamper with a statute that has worked reasonably well by making it far more complicated and restrictive in this day when we need every incentive possible to increase our mineral potential.

Thank you for this opportunity to present this information to you, and I will do my best to answer any questions that you have.

SENATE NATURAL RESOURCES
EXHIBIT NO. 13
DATE 3-23-87
BILL NO. 48629

TESTIMONY ASKING THAT HB629 BE AMENDED - MARCH 23, 1987

MY NAME IS WAYNE FLETCHER, AND I AM EMPLOYED AS A PROFESSIONAL CHEMIST. I AM VICE PRESIDENT OF THE LEWIS AND CLARK CHAPTER OF THE MONTANA MINING ASSOCIATION.

THE MINING INDUSTRY, IN GENERAL, FAVORS CONTROLS AND RESTRICTIONS ON THE USE OF CYANIDE AND OTHER HAZARDOUS MATERIALS. HB629 IS MUCH MORE THAN A SIMPLE BILL TO CONTROL HAZARDOUS SUBSTANCES. IT SEVERELY RESTRICTS THE ACTIVITIES OF PROSPECTORS AND DISCOURAGES DEVELOPMENT AND EMPLOYMENT, WHEN MONTANA NEEDS JOBS AND REVENUE.

IF THE BILL IS AMENDED TO REMOVE THE POTENTIALLY ENORMOUS BONDING REQUIREMENTS, REMOVE THE UNNECESSARY RESTRICTIONS ON PROSPECTING, AND ADDRESS ONLY THE USE OF CYANIDE AND OTHER HAZARDOUS CHEMICALS, IT WOULD FIND ALMOST UNIVERSAL SUPPORT IN THE MINING COMMUNITY.

NAME Ian Henderson BILL NO. 629ADDRESS 707 Dearborn, Helena DATE 3-23-87WHOM DO YOU REPRESENT Self - Mining ConsultantSUPPORT _____ OPPOSE _____ AMEND ☒

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I feel that the bill essentially wipes out the small miner (I hold a small miner permit) - water - mining.

For instance - page 3 #12 - under "prospector" refers to doing annual assessment work valued at less than \$100. Federal regulations require \$100 to be spent to satisfy annual work.

Under this bill a permit is needed to do any mineral project - not just those known to be deleterious to the surroundings - a little Dore in a gravelly operation or where perhaps even water itself might require control.

It would mean that one will be subject to passing to regulatory agencies that a mine is not deleterious before it can be developed.

I want to state Idaho is apparently considering a bill to control Cyanide - with which I concur.

I believe HB 629 should at least be reviewed by my colleagues.

Also I feel that the definition of "mineral" might require unnecessary loss of a potential mine - as economic changes occur - note Montana, Texas, Butte National Park, Montana, etc. etc. etc. and perhaps determine carefully considered requirements.

PROPOSED AMENDMENTS TO HB 642

by

MONTANA WATER DEVELOPMENT ASSOCIATION

Third Reading Copy

1. Page 2, line 24
Following: "APPROPRIATION"
Insert: "FROM THE SAME SOURCE"

HB 642
March 23, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

While the department supports this legislation, we have a concern with one portion of the bill.

Our concern is with the amended language in subsection 4 on page 14. That subsection originally gave a priority date of July 1, 1985 to any reservations granted under this section. The amendment gives priority over the reservation to any permit issued after July 1, 1985 if it does not substantially interfere with the reservation. The section as presented would appear to authorize two priority dates - one for reservation applicants and one for permit applicants.

The purpose of the reservation process is to determine water availability and allocate that water to consumptive and non-consumptive uses. If water is available for consumptive use as determined by the Board of Natural Resources, consumptive permit holders could obtain the 1985 priority.

In reality, there is little chance that any individual permit will substantially interfere with a reservation. However, the cumulative impact of a number of permits could affect a reservation. We then have the question of which permits are subordinate and which are not. It would seem this amendment only serves to complicate the process by creating a dual allocation process for selected water users.

Under the present law, over 200 permits have been issued in the past 18 months in the basin. All should have been conditioned to the reservation priority date. This process should continue as originally intended.

We would recommend a return to the original language and deletion of the amended language on lines 20 through 25.

EXHIBIT NO. 17DATE 3/23/87BILL NO. HB 642HB 642NAME Don JenniBILL NO. HB 642ADDRESS Rt. 2, Box 2228 LewistownDATE 3/23WHOM DO YOU REPRESENT selfSUPPORT OPPOSE XAMEND X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Wish to see Sec. 10 of HB 642 reinstated.
This would repeal 85-2-317.

An alternate to this, I would like to see the limit changed to 4,000 acre feet to be consistent with other DNRRC code. Also I would like to see appropriations for hydropower added to part (3) of 85-2-317. This would exempt hydropower as well as municipal use, public water supplies, and agriculture irrigation. Hydropower is a nonconsumptive, non polluting beneficial use of water.

HB 661
March 23, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife & Parks

The Natural Streambed and Land Preservation Act of 1975 has a noteworthy and proven history of success since its enactment. Over 6,000 projects have been reviewed to date and a majority of those have had to do with irrigation diversions.

There have been differences of opinion on methods used to divert water, but to date no one has been denied the right to get irrigation water. In fact, the law states specifically that such a right cannot be denied.

Since 1975, this law has provided an avenue for landowners to obtain new ideas and thoughts regarding alternatives to existing methods of diversion - alternatives that are often better from the standpoint of providing long-term, stable water diversion projects and providing less costly alternatives. State agencies, conservation districts and landowners are currently working on several such projects. This department has supported these efforts through the Stream Protection Act process, as well as financially.

The conservation districts have done a commendable job over the years with the administration of this law. HB 661 should continue the progress being made in regulating streambed projects.

The department recommends approval of HB 661.

SENATE NATURAL RESOURCES

EXHIBIT NO. 19 (cont)DATE 3/23/87BILL NO. 45661NAME Jesse Malone Jr BILL NO. 661ADDRESS RR 2 Box 204 Choteau, 59422 DATE 3/23/87WHOM DO YOU REPRESENT Seldorado Cooperative Canal CoSUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

TESTIMONY - HB 661

MONTANA SENATE NATURAL RESOURCES COMMITTEE

MARCH 23, 1987.

I am Jesse Malone, Jr., Choteau, MT., Teton County. I am the president of the Eldorado Co-operative Canal Co., a user of Teton River water.

Teton county ranks fifth in Montana in the total value of agricultural products. Compared with other Montana counties, Teton county is an irrigated county. A significant amount of our production is directly contingent on irrigation. In our county there are three large areas of irrigated lands:

1. Greenfield - Fairfield bench
2. Bynum - Brady district
3. The upper Teton River water users.

The last two areas encompass thousands of acres and include over 200 farms. These farmers all receive water from the Teton River. All are directly affected by this legislation and the 310 permit system. More of them would have liked to have been here today, however, the storm and calving changed their plans. We favor House Bill 661.

The upper Teton River is unique in its moving river bed. The water action is constantly moving the gravel that comprises the waterway. Periodically we have to remove the gravel that has been deposited in front of and in our water diversion facilities. It is particularly critical when there is an

ENVELOPE NO. 19
DATE 3/23/87
BILL NO. HB 661

unexpected and sudden flood of water that moves gravel into our facilities in late May or June. We have to maintain our water diversions. And the job has to be timely, because the year's crops are dependent on opportune irrigation.

That is why we have concerns about this legislation and the requirements pertaining to the 310 permit. Because of the time framework built into the application for the permit, more likely than not, the permit isn't approved for three weeks. The team members, charged with the responsibility of inspecting the 40 or so diversions on the Teton, find it a burdensome task and it is an unnecessary inconvenience when their own farms need attention. Our crops can't wait three weeks for irrigation water. We need the right to be able to do maintenance work in the area of our diversions, without undue limitations caused by the 310 permit system. We need the maintenance of the diversions defined as non-projects. We are in favor of House Bill 661. Our crops depend upon it. To a degree agricultural production in Teton County depends upon it.

STANDING COMMITTEE REPORT

March 23, 1987

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 718

THIRD reading copy (BLUE) color

REALLOCATING ENVIRONMENTAL CONTINGENCY ACCT. TO ENV. QUALITY PROTECTION FUND

HARPER (ECK)

Respectfully report as follows: That HOUSE BILL No. 718
BE AMENDED AS FOLLOWS:

1. Title, line 4.

Strike: "REALLOCATING"

Insert: "ALLOCATING"

2. Title, line 5.

Strike: "ENVIRONMENTAL CONTINGENCY ACCOUNT"

Insert: "INTEREST INCOME OF THE RESOURCE INDEMNITY TRUST FUND"

3. Title, line 8.

Strike: "75-1-1101, 75-1-1102"

Insert: "15-38-202"

4. Page 1, line 12, through line 8 on page 4.

Strike: sections 1 and 2 in their entirety

Insert: "Section 1. Section 15-38-202, MCA, is amended to read:

"15-38-202. Investment of resource indemnity trust fund -- expenditure -- minimum balance. (1) All moneys paid into the resource indemnity trust fund shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund shall annually be added thereto until it has reached the sum of \$10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches \$100 million. Thereafter, all net earnings and all receipts shall be appropriated by the legislature and expended, provided that the balance in the fund may never be less than \$100 million.

(2) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than \$10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by

XXXXXX
DO NOT PASS

XXXXXXXXXX
DO NOT PASS

CONTINUED

Chairman.

(3) Beginning in fiscal year 1986, 6% of the interest income of the resource indemnity trust fund must be allocated to the department of health and environmental sciences to be used to implement the Montana Hazardous Waste Act and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 in accordance with Title 75, chapter 10, part 6. The allocation in this subsection must be appropriated for each full biennium as necessary to obtain matching federal funds for the biennium.

(4) Beginning in fiscal year 1990, 4% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund, provided for in 75-10-704."

Renumber: subsequent sections

5. Page 4, line 16.

Following: "may"

Insert: "only"

6. Page 4, line 19 through line 2 on page 5.

Strike: "as" on page 4, line 19 through "conduct" on line 2, page 5

Insert: ". Fund uses must include the conduct of the hazardous waste site remedial action program, which is"

7. Page 5, line 3.

Strike: "(i)"

Insert: "(a)"

8. Page 5, line 4.

Strike: "(ii)"

Insert: "(b)"

9. Page 5, line 13.

Strike: "(2)(b)"

Insert: "(2)"

10. Page 6.

Following: line 3

Insert: "interest income of the"

11. Page 6, line 4.

Strike: "interest account"

Insert: "fund"

12. Page 6, line 5.

Strike: "75-1-1101"

Insert: "15-33-202"

13. Page 6, line 10.

Following: "75-1-1101"

Insert: "(5) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101."

14. Page 6.

Following: line 6

Insert: " NEW SECTION. Section 5. Coordination instruction.

If Senate Bill No. 373, including the section of that bill amending 15-38-202, is passed and approved, section 18 of Senate Bill No. 373 must read:

"NEW SECTION. Section 18. Coordination instruction. If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved:

(1) ~~the bracketed material in section 12(2)(d) of this act allocating funds to the reclamation and development grants account must read "50%", and~~

~~(2) the bracketed material in section 6 is void.~~

(1) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section of that bill amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "46%".

(2) If House Bill No. 777, including the section of that bill amending 15-38-202, is passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is not passed and approved, the bracketed material in section 12 must read "50%".

(3) If House Bill No. 777, including the section amending 15-38-202, is not passed and approved, and if House Bill No. 718, including the section amending 15-38-202, is passed and approved, the bracketed material in section 12 must read "52%"."

AND AS AMENDED
BE CONCURRED IN

STANDING COMMITTEE REPORT

MARCH 23

67

..... 19.....

MR. PRESIDENT

We, your committee on.....**NATURAL RESOURCES**.....

having had under consideration.....**HOUSE JOINT RESOLUTION**..... No.....**6**.....

THIRD..... reading copy (**BLUE**)
color

**REQUESTS EPA TO REVISE UNDERGROUND SALT WATER INJECTION POLICY-JUDITH RIV
PH**

SCHEYE (KEATING)

Respectfully report as follows: That.....**HOUSE JOINT RESOLUTION**..... No.....**6**.....

BE CONCURRED IN

XXXXXX
DO PASS

XXXXXXXXXX
DO NOT PASS

.....
SENATOR THOMAS F. KEATING, Chairman.

STANDING COMMITTEE REPORT

MARCH 23

19 87

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE JOINT RESOLUTION No. 24

THIRD reading copy (BLUE)
color

EXTENDS WESTERN STATES FORESTRY TASK FORCE

SWIFT (SEVERSON)

Respectfully report as follows: That HOUSE JOINT RESOLUTION No. 24

BE CONCURRED IN

XXXXXX
DO PASS

XXXXXX
DO NOT PASS

SENATOR THOMAS F. KEATING, Chairman.

MINUTES OF THE MEETING
NATURAL RESOURCES COMMITTEE
MONTANA STATE SENATE

March 25, 1987

EXECUTIVE SESSION: An Executive Session of the Senate Natural Resources Committee was called to order by Chairman Thomas F. Keating on March 25, 1987, at 1:00 P.M. in Room 405 of the State Capitol.

ROLL CALL: All members were present with the exception of Senator Cecil Weeding, who was excused.

DISPOSITION OF HOUSE BILL 760: Sen. Keating explained that HB 760 would authorize issuance of CERCLA Bonds for Superfund remediation action by DHES. Sen. Halligan moved that HB 760 BE CONCURRED IN. Motion passed by unanimous vote. Sen. Halligan will carry the HB 760 in the Senate.

DISPOSITION OF HOUSE BILL 777: HB 777 would provide funding for hazardous waste programs and CERCLA participation. Sen. Keating said that the additional 6% of RIT money being allocated for use for Superfund cleanup is simply "earmarking" and not robbing. Sen. Walker moved that HB 777 BE CONCURRED IN because currently, hazardous waste and water development are the only two programs in RIT package; and in dealing with the issue in Long-Range Planning, 6% had already been calculated. A handout prepared at the request of Sen. Halligan was distributed by Hugh Zackheim, Environmental Quality Control. (Exhibit 1) After viewing the handout, Sen. Keating asked for a definition of "high ranking" and "low ranking," and called upon Bill Opitz, Deputy Director of the Department of Health to reply. Mr. Opitz explained that "high ranking" would be 28 1/2 points or more would qualify the sites to be included on the Superfund list. Any other site with 28 points or less would be considered for department's review and would be covered under HB 777.

HB 777 passed out of committee with a unanimous vote.

DISPOSITION OF HOUSE BILL 746: Sen. Keating stated that HB 746 would require local licensing for on-site sewage treatment systems, and Sen. Gage moved that HB 746 BE NOT CONCURRED IN.

In the discussion that followed, many reasons were given to adopt an adverse committee report:

1. Sewage pollution in Flathead Lake seemed to be a local problem rather than a State-wide problem, except in fringe urban areas and clay-type soil.
2. Local boards at present do have authority concerning septic tank sewage systems.
3. Passing of HB 746 would mean more growth of local government.
4. Assessing fees for existing systems would amount to an additional "tax" for the people.

In addition, Sen. Gage said that part of the problem for pollution in Flathead Lake was phosphate, and in the 1985 session, there was testimony that agriculture was contributing 10 times more phosphate pollution than use of household detergents. Sen. Gage stated that nothing is being done concerning agricultural controls; and until major problems are taken care of, there is no need to take care of "around the edges."

Members of the committee asked Mr. Zackheim if all septic tanks were not under DHES control, and he answered that only new subdivisions are unless there is a problem with a particular sewage system that comes to DHES' attention.

Motion that HB 746 NOT BE CONCURRED IN passed with a majority vote, with Sen. Halligan opposing the motion.

DISPOSITION OF HOUSE BILL 453: HB 453 would authorize Department of Commerce to represent tourism in Flathead Lake management at no extra cost to State government. Sen. Lynch moved that HB 453 BE CONCURRED IN. Motion passed by majority vote. Sens. Severson, Gage, and Halligan voted "no."

DISPOSITION OF HOUSE BILL 642: HB 642 would revise water permit laws and qualify Missouri Basin Water Reservations. Sen. Keating stated that at the March 23 meeting, an amendment had been proposed by Ted Doney:

Page 2, line 24

Following: "APPROPRIATION"

Insert: "from the same source"

Sen. Walker moved that the amendment be adopted, and motion passed with unanimous vote.

Sen. Keating inquired whether there was question about the word "combined" in the bill and both Ted Doney and Rep. Spaeth replied there was no problem with the word.

Sen. Keating mentioned that on page 21 of the bill, section 10 was a repealer of 85-2-317 MCA. Sen. Keating related the fact that DNRC had a sufficient handle on permits, process, and applications, and he did not understand why citizenry should be required to wait two years to receive approval to use 3,000 acre feet of water from Legislature when the department could easily approve.

Sen. Halligan made a motion that section 10 be reinstated to repeal the requirement that applicants must go before the legislature for use of more than 3,000 acre feet of water. Sen. Lynch stated that the requirement had only been in effect since 1983 and the system was working well. Roll Call Vote was taken on the motion and the motion FAILED.

Sen. Lynch moved that HB 642 AS AMENDED, BE CONCURRED IN. Motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL 661: Sen. Keating told the committee that HB 661 was redefining "project." Sen. Keating mentioned that at the March 25, 1987, hearing the Water Development Board opposed HB 661. However, Rep. Spaeth explained that in the interim, all parties had come to an agreement and amendments had been made. Copies of the amendments were distributed to committee members, and Rep. Spaeth said the amendments had been approved by the Water Board, Department of Fish and Wildlife, as well as the Supervisors. (Exhibit 2) Rep. Spaeth recommended that the amendments be adopted and added that there was a need for a Statement of Intent (Exhibit 3) and a couple of technical amendments that are listed below.

1. Page 1, line 10
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS"
2. Page 1, line 10
Following: "75-7-103"
Insert: "AND 75-7-117"

Sen. Lynch moved the amendments, and motion CARRIED unanimously. Sen. Walker moved that the Statement of Intent DO PASS, and motion CARRIED unanimously.

Sen. Walker then moved that HB 661 AS AMENDED with the Statement of Intent BE CONCURRED IN. Motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL 629: Sen. Lynch moved that HB 629, which generally would revise the metal mine reclamation laws, BE NOT CONCURRED IN. In explaining his motion, Sen. Lynch said HB 629 did not seem to be in the best interest of the small mining people. Furthermore, Sen. Lynch mentioned that the support of the Mining Association had become lukewarm. Sen. Lynch added that development in Montana should not be discouraged.

Sen. Keating asked Mr. Hemmer, Department of State Lands whether or not there is a problem with cyanide use by the small miner. Mr. Hemmer responded that there had been problems only in isolated instances and he recommended that the committee should either pass an adverse committee report or table HB 629 because bill still had to be refined. Mr. Hemmer had met with the mining people for a few hours, and he stated there is still some disagreement about the bill. Within the next two years, Mr. Hemmer said that compromises could be made until there is agreement among all concerned and the Grizzley Gulch people's problem can be solved because existing law covers them.

Sen. Keating addressed Mr. Dugdale who represented small miners and asked if Mr. Dugdale felt there was some abuse of the use of cyanide among the small miners.

Mr. Dugdale replied that miners start out with good intentions and end up ill-advised and don't follow original agreement made with Department of State Lands (DSL), thereby violating the environment.

Sen. Keating then asked if the small miners were becoming aware of the fact that if there is continued misuse of cyanide, laws could be enacted that would make operating their mines more difficult. Mr. Dugdale answered that he believed small miners are becoming aware of that fact and he, himself, is a proponent.

Sen. Keating then asked whether small miners might police the use of cyanide themselves so that State would see some clean up.

Mr. Dugdale said that he would help in whatever ways he could and told the committee that his colleagues were of the same environmental concept.

It was Sen. Keating's contention that small miners should not be put out of business by imposing more restrictions and regulations on them, but health and safety of the citizens must be considered, particularly people who have residential or agriculture property near the small mines.

Senate Natural Resources Committee wanted the message conveyed to the small miners to do some policing concerning cyanide.

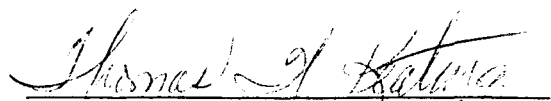
Discussion ensued which indicated that the mining industry themselves were in support of a "cyanide bill," because it seemed that the small miner had been giving a negative image to the "big miners" because of misuse of cyanide.

Mr. Dugdale explained that no matter how good intentions are, no matter how competent the engineers are, or how much money is used to setting the property up, an adverse circumstance can still happen in which the environment can be contaminated; such as, the situations that happened with the Zortman-Landusky operation and the Golden Sunlight operation. Mr. Dugdale said the small miners try to avoid those circumstances and work with DSL in a harmonious manner. Mr. Dugdale indicated that much had been accomplished: 1) neutralization of a discharge to avoid contamination of the environment; and 2) development of ponding techniques to overcome the shortcomings of the initial effort. If the wording in the original bill by DSL had remained without the addition of the wording initiated by Montana Mining Association, the small miners would have supported HB 629.

In the course of the committee's discussion, it was mentioned that because of the Pegasus operation, cyanide almost polluted their area's stream during last spring's rainy season and accidents can inadvertantly happen to the larger mining operations as well.

Motion of BE NOT CONCURRED IN passed with majority vote, but Sen. Yellowtail voted "no" on the motion.

There being no further business to come before the committee, Sen. Keating adjourned the meeting at 1:40 p.m.


THOMAS F. KEATING, Chairman

ROLL CALL

NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3/25

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Keating, Chairman	✓		
Sen. Cecil Weeding, Vice Chairman			✓
Sen. John Anderson	✓		
Sen. Mike Halligan	✓		
Sen. Delwyn Gage	✓		
Sen. Lawrence Stimatz	✓		
Sen. Larry Tveit	✓		
Sen. "J.D." Lynch	✓		
Sen. Sam Hofman	✓		
Sen. William Yellowtail	✓		
Sen. Elmer Severson	✓		
Sen. Mike Walker	✓		

Each day attach to minutes.

DATE March 25, 1987

COMMITTEE ON Natural Resources

(Executive Session)

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretariat)

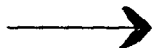
SENATE NATURAL RESOURCES

EXHIBIT NO. 1

DATE March 25, 1987

BILL NO. HB 777

HAZARDOUS WASTE
SITES
IN MONTANA



EPA EVALUATION

HIGH RANKING
(10 - 20 sites)

LOW RANKING
(100+ sites)

NATIONAL PRIORITY LIST

Program: SUPERFUND

Lead Agency: EPA

Approach: EPA sponsors studies and selects cleanup alternatives.
If responsible party (RP) refuses to act, EPA conducts cleanup and seeks to recover costs and damages from RP.

State Role: State must provide a 10% share before EPA can tap the Superfund and proceed with cleanup (when RP refuses to act).

Legislation: HB 777 proposes an additional 6% RIT allocation to provide state's 10% share of cleanup.

HB 760 proposes bonding authority, to be used if cash on hand is inadequate for state's 10% share.

NONFEDERAL SITES

Program: None (authority for action established through HB 766 (1985))

Lead Agency: DHES

Approach: Similar to EPA approach under Superfund

Legislation: HB 718 proposes to set up Hazardous Waste Site Remedial Action Program to prioritize sites, work with responsible parties to initiate cleanup, and fund state action (through a 4% allocation of RIT interest) if necessary.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE March 25, 1987
BILL NO. HB 777

PROPOSED AMENDMENTS TO HB 661

by

CONSERVATION DISTRICTS DIVISION

Third Reading Copy

SENATE NATURAL RESOURCES

EXHIBIT NO. 2

DATE March 25 1987

BILL NO. 661

1. Page 2, line 15 and 16
Following: 75-7-102,
Strike: "AS DETERMINED BY THE TEAM SUPERVISORS"
2. Page 2, line 17
Strike: AN ANNUAL PLAN OF
Insert: A PLAN OF ANNUAL
3. Page 3
Following: line 5
Insert: "Section 2. Section 75-7-117, is amended to read:"

"75-7-117. Rules--minimum standards. (1) By July 17 1975,
~~the~~ The board of natural resources and conservation, after
consultation with the association of conservation districts,
shall adopt, and may from time to time revise, rules setting
minimum standards and guidelines for the purpose of this part.

(2) By January 17 1976, ~~the~~ The supervisors of each
district shall adopt, and may from time to time revise, by
resolution after a public hearing rules setting standards and
guidelines for projects, and exclusions, within their district
which ~~shall~~ meet or exceed, or are not covered by, the minimum
standards set by the board under subsection (1)."

Renumber: subsequent sections.

SENATE NATURAL RESOURCES

EXHIBIT NO. 3

DATE March 25, 1987

BILL NO. HB 661

STATEMENT OF INTENT

A statement of intent is required for this bill in order to clarify that the board of natural resources and conservation and boards of supervisors of conservation districts may revise their rules as necessary. Section 2 clarifies that boards of supervisors are authorized to establish standards and guidelines for projects and exclusions within their districts for matters not covered by the minimum standards and guidelines established by the board of natural resources and conservation. Section 2 also provides authorization to adopt rules identifying repair and maintenance activities that are not "projects" as that term is defined in 75-7-103 because the activities do not significantly alter a stream. Section 2 further authorizes rulemaking to identify the following: 1) categories of information that should be included in plans of annual operation; 2) procedures for filing the plans; and 3) procedures for evaluation and board of supervisor decisions concerning the plans.

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES

Date March 25 House Bill Bill No. 642 Time 1:25

NAME	YES	NO
Sen. Tom Keating, Chairman	✓	
Sen. Cecil Weeding, Vice Chairman		
Sen. John Anderson		✓
Sen. Mike Halligan		✓
Sen. Delwyn Gage	✓	
Sen. Lawrence Stimatz		✓
Sen. Larry Tveit	✓	
Sen. "J.D." Lynch		✓
Sen. Sam Hofman	✓	
Sen. William Yellowtail		
Sen. Elmer Severson		—
Sen. Mike Walker		—

Nadine McCurdy
Secretary

Senator Tom Keating
Chairman

Motion: Repealer (section 10) to be reinstated
motion failed

Note: at 1:25 Sen. Yellowtail was in another meeting,
presenting a bill.

STANDING COMMITTEE REPORT

MARCH 23

87

..... 19.....

MR. PRESIDENT

NATURAL RESOURCES

We, your committee on.....

HOUSE BILL

453

having had under consideration..... No.....

THIRD

BLUE

reading copy (.....)
color

**AUTHORIZES DEPT OF COMMERCE TO REPRESENT TOURISM IN FLATHEAD
LAKE MANAGEMENT**

BRANDEWIE (HARDING)

HOUSE BILL

453

Respectfully report as follows: That..... No.....

BE CONCURRED IN

~~XXXXX~~
DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

SENATOR THOMAS F. KEATING,.....
Chairman.

STANDING COMMITTEE REPORT

MARCH 25

19 87

MR. PRESIDENT

NATURAL RESOURCES

We, your committee on.....

HOUSE BILL

No. 629

having had under consideration.....

THIRD

BLUE

reading copy ()

color

GENERALLY REVISES THE METAL MINE RECLAMATION LAWS

REAM (KEATING)

HOUSE BILL

No. 629

Respectfully report as follows: That.....

BE NOT CONCURRED IN

~~XXXXXX~~

~~XXXXXX~~

SENATOR THOMAS P. KEATING, Chairman.

STANDING COMMITTEE REPORT

MARCH 25

87

19.....

MR. PRESIDENT

We, your committee on NATURAL RESOURCES

having had under consideration HOUSE BILL No. 661

THIRD reading copy (BLUE)
color

REDEFINE "PROJECT" TO CLARIFY DOES NOT INCLUDE DIVERSION FOR IRRIGATION

SPAETH (BECK)

HOUSE BILL

661

Respectfully report as follows: That..... No.....

BE AMENDED AS FOLLOWS:

1. Page 1, line 10.

Following: "AMENDING"

Strike: "SECTION"

Insert: "SECTIONS"

2. Page 1, line 10.

Following: "75-7-103"

Insert: "AND 75-7-117"

3. Page 2, lines 15 and 16.

Following: "75-7-102"

Strike: ", AS DETERMINED BY THE TEAM SUPERVISORS"

4. Page 2, line 17.

Strike: "AN ANNUAL PLAN OF"

Insert: "a plan of annual"

5. Page 3, following line 5.

Insert: "Section 2. Section 75-7-117, MCA, is amended to read:

"75-7-117. Rules--minimum standards. (1) ~~By July 1, 1975, the~~
The board of natural resources and conservation, after consultation
with the association of conservation districts, shall adopt, and may
from time to time revise, rules setting minimum standards and guidelines
for the purpose of this part.

(2) ~~By January 1, 1976, the~~ The supervisors of each district
shall adopt, and may from time to time revise, by resolution after a
public hearing rules setting standards and guidelines for projects,
and exclusions, within their districts which shall meet or, exceed, or

~~xxxx-x~~ are not covered by the minimum standards set by the board
~~DO PASS~~ under subsection (1)."

~~XXXXXXXXX~~
~~DO NOT PASS~~
Remember: subsequent sections.

AND AS AMENDED,
BE CONCURRED IN
STATEMENT OF INTENT ADOPTED AND ATTACHED

SENATOR THOMAS F. KEATING, Chairman.

March 25, 1987

MR. PRESIDENT:

WE, YOUR COMMITTEE ON NATURAL RESOURCES HAVING HAD
UNDER CONSIDERATION HOUSE BILL 661, ATTACH THE FOLLOWING
STATEMENT OF INTENT:

STATEMENT OF INTENT

A statement of intent is required for this bill in order to clarify that the board of natural resources and conservation and boards of supervisors of conservation districts may revise their rules as necessary. Section 2 clarifies that boards of supervisors are authorized to establish standards and guidelines for projects and exclusions within their districts for matters not covered by the minimum standards and guidelines established by the board of natural resources and conservation. Section 2 also provides authorization to adopt rules identifying repair and maintenance activities that are not "projects" as that term is defined in 75-7-103 because the activities do not significantly alter a stream. Section 2 further authorizes rulemaking to identify the following: 1) categories of information that should be included in plans of annual operation; 2) procedures for filing the plans; and 3) procedures for evaluation and board of supervisor decisions concerning the plans.

STANDING COMMITTEE REPORT

.....March 25..... 19 87.....

MR. PRESIDENT

We, your committee on.....**NATURAL RESOURCES**.....

having had under consideration.....**HOUSE BILL**..... No.....**746**.....

THIRD..... reading copy (**BLUE**)
color

REQUIRING LOCAL LICENSES FOR ON-SITE SEWAGE TREATMENT SYSTEMS

BRANDEWIE (GAGE)

Respectfully report as follows: That.....**HOUSE BILL**..... No.....**746**.....

BE NOT CONCURRED IN

~~XXXX~~
DO PASS

~~XXXXXXXXXX~~
DO NOT PASS

.....**SENATOR THOMAS F. KEATING,** Chairman.....

STANDING COMMITTEE REPORT

MARCH 25 19. 87

MR. PRESIDENT

We, your committee on **NATURAL RESOURCES**
having had under consideration **HOUSE BILL** No. **642**
THIRD reading copy (**BLUE**)
color

REVISES WATER PERMIT LAWS; QUALIFIES MISSOURI BASIN WATER RESERVATIONS

SPAETH (KEATING)

Respectfully report as follows: That **HOUSE BILL** No. **642**

BE AMENDED AS FOLLOWS:

1. Page 2, line 24
Following: **"APPROPRIATION"**
Insert: **"from the same source"**

AND AS AMENDED
BE CONCURRED IN

XXXXX
DO PASS

XXXXXXXXX
DO NOT PASS

.....
SENATOR THOMAS F. KEATING, Chairman.

STANDING COMMITTEE REPORT

MARCH 25

19. 87

MR. PRESIDENT

We, your committee on **NATURAL RESOURCES**

having had under consideration..... **HOUSE BILL**..... No. **760**.....

THIRD reading copy (**BLUE**)
color

**AUTHORIZING ISSUANCE OF CERCLA BONDS FOR SUPERFUND REMEDIAL ACTION
BY DHES**

REAM (GALLIGAN)

Respectfully report as follows: That..... **HOUSE BILL**..... No. **760**.....

BE CONCURRED IN

~~XXXX~~
~~DO PASS~~

~~XXXXXXXXXX~~
~~DO NOT PASS~~

.....
SENATOR THOMAS F. KEATING,

Chairman.

STANDING COMMITTEE REPORT

MARCH 25

1987

MR. PRESIDENT

We, your committee on **NATURAL RESOURCES**

having had under consideration **HOUSE BILL**

No. **777**

THIRD reading copy (**BLUE**)
color

PROVIDING FUNDING FOR HAZARDOUS WASTE PROGRAMS AND CERCLA PARTICIPATION

REAN (WALKER)

Respectfully report as follows: That **HOUSE BILL**

No. **777**

BE CONCURRED IN

XXXXXX
DO PASS

XXXXXXXXXX
DO NOT PASS

.....
SENATOR THOMAS F. KEATING, Chairman.